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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 172.

JOSEPH PENN, ASSIGNEE OF THE PEOPLE'S BANK OF BELLEVILLE, APPELLANT,

vs.

PHILO C. CALHOUN, TRUSTEE, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 15, 1883.

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1 *Placita.*

Pleas in the circuit court of the United States of America within and for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and, in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit of the United States *pro tempore*, sole judge of said circuit court, on Friday, the 10th day of August, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth year.

J. A. JONES, *Clerk.*

PHILO C. CALHOUN, Survivor, Trustee,
vs.
THE ST. LOUIS and SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

and Consolidated.

2 FREDRIK WILLEM OEWEL *et al.*
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

In the Matter of the Intervening Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville, Illinois.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Philo C. Calhoun and George Opdyke, trustees, having brought their bill in said court against the St. Louis and Southeastern Railway Company (Consolidated), and afterwards Fredrik Willem Oewel *et al.* having brought their bill in said court against the St. Louis and Southeastern Railway Company (Consolidated) *et al.*, said two causes were afterwards, by a decree of said court, consolidated.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 21st day of October, in the year of our Lord one thousand eight hundred and
3 seventy-four, came Philo C. Calhoun and George Opdyke, trustees, the complainants in the suit first above mentioned, and filed their bill herein against the said St. Louis and Southeastern Railroad Company (Consolidated), and thereupon on the same day (being Wednesday) the following proceeding were had in said court at Chambers and entered of record in said cause, to wit:

Decree Appointing J. F. Alexander Receiver.

PHILO C. CALHOUN and GEORGE OPDYKE
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated). } In Chancery.

This day come the parties herein, and the defendants having admitted the default complained of in the bill, and after hearing

the motion of the complainants for the appointment of a receiver, according to the prayer of the bill, upon the pleadings, exhibit, and affidavits on file, it is ordered and decreed, and this court doth, on this twenty-first day of October, 1874, order and adjudge, that Jediah F. Alexander, of Greenville, Illinois, be, and he is hereby, appointed receiver in this cause, with power to enter and take possession of the railroad of said St. Louis and Southeastern Railway Company (Consolidated) in the States of Illinois and Indiana, and all its branches in the said States of Illinois and Indiana, together with all supplies and materials provided by said company to be used in the construction, reconstruction, and repair of said road, or to be used in operating the same, with all side tracks, switches, station-houses, warehouses, water stations, turn-tables, rights of way and grounds in use or necessary or convenient to be used in operating said road belonging to said company; also all locomotives, engines, cars, and rolling-stock of every kind and description owned by and belonging to said company and used in operating the roads of the said company in the States of Illinois and Indiana; and all tools and implements used in operating said roads or provided therefor; and all machine-shops and all work-shops, and the machinery, tools, and implements therein; and stock of wood, iron, or other materials on hand belonging to said company to be used in the construction of shops or shop machinery; and all money, credits, and choses in action belonging to said company; and all other property, real or personal, of whatsoever name, nature, or description, and wheresoever situate, belonging to said company, and provided by it to be used in the prosecution of its business, whether the same be in actual use or not, and the same to hold, use, and dispose of under the order and direction of this court, to be made from time to time herein and therewith, until otherwise ordered; the said receiver shall operate said company's road and branches and transfers upon the rivers Ohio and Mississippi situate in the States of Illinois and Indiana, throughout the whole extent thereof, according to the usual course of business thereof, as part of the continuous line from St. Louis to Nashville, Tennessee, as now operated by the St. Louis and Southeastern Railway Company (Consolidated), and to the best advantage for the interest, of parties concerned, and generally to maintain said road, its rolling-stock and fixtures and appurtenances, in thoroughly good, efficient, and safe condition for use, and to provide for that purpose by purchase for cash or credit, or partly for cash and partly on credit, cars, materials, and supplies whenever necessary, and the corporate officers of said company, their agents, servants, and employees holding the custody and charge of said property and effects of said company, or any part thereof, to be taken possession of by said receiver as aforesaid, are hereby ordered and required forthwith, upon the request of said receiver, to surrender the same, and all books, papers, accounts, vouchers, and agreements, and evidences of debt due to or by said company, so far as within the jurisdiction of this court, to the said receiver, his agents or employees, and all of the same, without any such actual delivery, shall immediately upon his giving a bond and

taking the oath herein required, be held and taken to be vested in his actual possession, and subject to his order for all purposes needful in the prosecution of the business of the said company; and the said receiver is hereby authorized and empowered to retain, employ, and pay all such agents, servants, laborers, clerks, and assistants as in his discretion may be necessary under him to carry this order into effect with economy and prudence, and to make, enter into, and perform all contracts for the obtaining of necessary supplies and materials, and for the prosecution of said business, and for the purposes above named, and for the purpose of paying all rentals upon leased property and equipments and terminal
7 expenses, said receiver is hereby fully authorized and empowered to appropriate and apply the property, money, and effects aforesaid, vested in him as aforesaid, with the current earnings of said road and business, so far as the same may be necessary; and said receiver is hereby ordered and required to keep or cause to be kept, in a regular and systematic order, strict and regular accounts of the business of said trusts in his hands, and of the daily receipts and disbursements of money, distinguishing in such accounts the receipts and disbursements of the road of the said company earned and expended in the States of Illinois and Indiana, and stating the mode of division of the earnings arising from through business which passes over any portion of the company's roads in other States and showing the items in detail, and he is required to file in the office of the clerk of this court, once in each month and within twenty days after the expiration of each month, an abstract account of his receipts and disbursements, and shall, as often as required by the special order of the court, make full reports of his doings and settle accounts; and the said receiver is also hereby ordered and required to deposit the surplus money
8 accruing in his hands over and above current expenditures in some national bank or banks to his credit as receiver herein, paying to the National Bank of the State of Missouri any overdrafts now due from said company. It is further ordered by the court that said receiver, out of net earnings which may come into his hands from the operation of the road, and as speedily as the same can be done without prejudice to the current business, pay its proportionate part of all certificates of indebtedness, and all such balances as are now due to the operatives and persons employed heretofore by the said company in the prosecution of its business in operating its road, and all sums due for supplies and materials used in maintaining and keeping the same in repair since the first day of January, 1874, a schedule of all which said indebtedness shall be prepared by the said receiver as speedily as practicable and filed with the clerk of the court, provided, however, that no payment on account of such balances or indebtedness shall be made until the said schedule has first been filed as provided.

The receiver shall also pay in like manner all sums which are now or may hereafter become due for taxes upon any of the
9 property coming to his hands as receiver; also all sums now due or to become due on ticket, freight, and mileage bal-

ances due other roads; also all sums which are now or may hereafter become due, either by way of principal or interest, for liens upon the aforesaid property existing prior to the first day of October, 1872, and not since discharged, and also all interest or principal due or to become due upon any purchase of property, which comes to his hands as receiver, and which, in the judgment of the said receiver, it will be beneficial to the estate in his possession to pay; and if, after making all payments hereinbefore authorized, there shall remain in the hands of the said receiver at any time any surplus moneys he shall report the same to this court and await the further order of the court as to the disposition of the same; and the said receiver is further directed to proceed with all practicable dispatch, after he shall enter upon the discharge of his duties, to take an inventory of all and singular the property and effects of every description which may come to his possession or under his control in virtue of this order, and to file such inventory in this court.

10 And the receiver is further empowered, in his discretion, to remove any of the officers or employers of said railroad company, other than the president and directors thereof, and such other officers as pertain to and are necessary to maintain the corporate organization, but, notwithstanding this reservation, the entire management of said road and the power to appoint and remove all managers, superintendents, engineers, and other agents and employers in any way concerned in operating the said road shall belong to the receiver. The receiver acting in pursuance of this or any order or decree of this court herein in good faith shall not be individually liable for any breach of any contract entered into by him as such receiver, or for the fulfillment of any obligation entered into by him as such receiver, or for any injury to the person or property of the parties, or of third persons, or for the faults or negligence of his subordinates, but the property, moneys, and effects that shall at any time be in his hands as such receiver shall be bound for all such breaches or wrong, and may from time to time, as may be necessary, be applied in such manner as this court shall direct.

11 It is further ordered that said receiver, before entering on his duties aforesaid, shall enter into a bond with two sureties to the acceptance of the clerk of this court, in the penal sum of fifty thousand dollars ($50,000.00), conditional for the faithful performance of all duties enjoined upon him by this order.

And it is further ordered that Jediah F. Alexander shall take an oath before the clerk of this court faithfully to perform his duties as receiver in this cause, and he shall be paid as compensation for his services as such receiver five thousand ($5,000.00) dollars per annum, payable monthly, on his own receipts filed.

And afterwards, to wit, on Saturday, the 2d day of September, in the year of our Lord one thousand eight hundred and seventy-six, the following further proceedings were had in said court at Chambers and entered of record in said first above mentioned cause, to wit:

Order Appointing Jas. H. Wilson Receiver.

PHILO C. CALHOUN and GEORGE OPDYKE
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated). } In Chancery.

12 And now, on this 2d day of September, 1876, it is ordered and decreed by the court that James H. Wilson be, and he is hereby, appointed receiver in this cause in the place of J. F. Alexander, deceased; and that before entering upon the duties of the position he give bond in the sum of fifty thousand dollars ($50,000.00) for the faithful performance of the duties of receiver, with security to be approved by the clerk of this court.

And afterwards, to wit, on the 3d day of July, in the year A. D. 1879, came the said Fredrik Willem Oewell *et al.*, by their solicitors, and filed in said court their bill against the St. Louis and Southeastern Railway Company (Consolidated) *et al.*

And afterwards, to wit, on Monday, the 30th day of August, at the June term of said court, in the year A. D. 1880, the following proceedings were had in said court in said causes as consolidated and entered of record, to wit:

13 *Decree of Foreclosure, &c.*

FREDRIK WILLEM OEWEL, ABRAM CARL WERTHEIM, BERNARD LEO GOMPERTZ and CARL WERTHEIM,
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated), The St. Louis and Southeastern Railway Company of Illinois, The St. Louis and Southeastern Railway Company of Illinois and Indiana, The Evansville & Southern Illinois Railroad Company of Illinois, the Evansville, Carmi & Paducah Railroad Company, Philo C. Calhoun, Survivor, Trustee; James H. Wilson, as Receiver, &c.; Nicholas Fromong, The Belleville Savings Bank, James Martin, The People's Bank of Belleville, Elizabeth Bughart, William Lane, H. P. H. Morgan, David Adams, J. H. Ferguson, W. R. McCauley, Daniel Hay, W. S. Hay, Jacob Peters, Isham Wheeler, W. C. Shaw, S. R. Card, James Hogan, A. B. Barrett, George Casner, Clayton Isham, Merris Wright, George S. Parrer, G. L. McGinnis, Frederic Martin, Jonathan Breeze, Ferdinand Schliefer, Barnett Jess, Louis Heiting, Administrator of Frederick Heiting (deceased); Michael Golden, Dennis Clancy, Augustus Schumert, Henry Butz, John Ennis, Thomas Sheehan, Gottlieb Haege, William Burke, Henry Veeke, John Mansfield, Peter Lux, Cornelius Reily, Henry Xeihnert, Francis H. Cable, William Schultz, Fritz Kemmerer, Peter Theobald, Charles Miller, Salem Goodner, John Hoxter, Alfred Covington, Jacob Wirtner, John Daily, and Mathias Wechsler. } In Equity.

14 PHILO C. CALHOUN, Survivor, Trustee,
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated), The St. Louis and Southeastern Railway Company of Illinois, The Evansville and Southern Illinois Railroad Company of Illinois, The Evansville, Carmi and Paducah Railroad Company, *et al.* } In Equity.

And now, to wit, on the thirtieth day of August, 1880, in the June term, these causes came on to be finally heard upon the several pleadings, proofs and exhibits therein, and also came on to be heard the motion of the several complainants therein to consolidate the said causes, and the same were argued by counsel, Messrs. Judd & Whitehouse and Bluford Wilson appearing for the several complainants, and Messrs. Scholes & Mather appearing for the defendant, The St. Louis and Southeastern Railway Company (Consolidated), and for The St. Louis & Southeastern Railway Company of Illinois, The St. Louis & Southeastern Railway Company of Illinois and Indiana, The Evansville & Southern Illinois Railroad Company of Illinois, and The Evansville, Carmi & Paducah Railroad Company, and S. P. Wheeler, Esq., appearing for Joseph Wilhelm Drexel and Charles Edward Tracy, intervening petitioners.

And thereupon, upon consideration thereof, it is ordered that the said motion be, and the same is, sustained, and that the said several causes be, and they are hereby, consolidated.

15 And it appearing that the bill had heretofore been ordered to be taken *pro confesso* in the said foregoing first entitled cause against the following-named defendants in the above first entitled cause, The St. Louis and Southeastern Railway Company (Consolidated), The St. Louis and Southeastern Railway Company of Illinois, The St. Louis & Southeastern Railway Company of Illinois & Indiana, The Evansville & Southern Illinois Railroad Company of Illinois, The Evansville, Carmi & Paducah Railroad Company, Philo O. Calhoun, surviving trustee, &c.; James H. Wilson, as receiver, &c.; Nicholas Fromong, The Belleville Savings Bank, The People's Bank of Belleville; Elizabeth Bughart, H. P. H. Morgan, J. H. Ferguson, W. R. McCauley, Daniel Hay, W. S. Hay, Jacob Peters, Isham Wheeler, W. C. Shaw, S. R. Card, James Hogan, A. B. Barrett, George Casner, Clayton Isham, Morris Wright, George S. Parrer, G. L. McGinnis, Frederic Martin, Jonathan Breeze, Ferdinand Schliefer, Barnett Jess, Louis Heiting, administrator of Frederick Heiting, deceased; Michael Golden, Dennis Clancey, Augustus Schumert, Henry Butz, John Ennis, Thomas Sheehan, Gottlieb Haege, William Burke, Henry Veeke, John Mansfield, Peter Lux, Cornelius Reiley, Henry Ziehnert, Francis H. Cable, William Schultz, Fritz Kemmerer, Peter Theobald, Charles Miller, Salem Goodner, John Hoxter, Alfred Covington, Jacob Wirtner, John Daily, Mathias Wechsler.

And the court, having examined the depositions taken and filed herein, and having considered the same and the exhibits therein

referred to, and having also heard and considered the other proofs taken in the said causes in open court, and having also heard the arguments of counsel of the respective parties in respect to the merits, and being now fully advised and satisfied in the premises, it is now ordered, adjudged, and decreed as follows, namely:

The court doth find and determine from such depositions, exhibits, and proofs as follows:

I. That the St. Louis and Southeastern Railway Company of the State of Illinois was duly incorporated under and by virtue of an act of the Legislature of the State of Illinois, entitled "An act to incorporate the St. Louis and Southeastern Railway Company," passed March 10, 1869; and that the said corporation, by due authority of law, prior to the 1st day of October, 1869, constructed, in whole or in part, under its corporate powers, a railway in the State of Illinois extending from East St. Louis, upon the Mississippi river and in the State of Illinois by the way of Mount Vernon, McLeansboro', and Equality, Illinois, to Shawneetown, upon the Ohio river, in the State of Illinois, a distance of about one hundred and sixty miles.

II. That on or about the 1st day of October, 1869, the said St. Louis and Southeastern Railway Company, as thereto duly authorized by law, executed, under its corporate seal, its twenty-two hundred and fifty (2,250) bonds, in the sum of one thousand
16 dollars each, payable in gold coin of the United States on the 31st day of October, 1894, at the office or agency of the company in the city of New York, with interest at the rate of seven per cent. per annum, payable in like gold coin, on the first days of November and May in each year, on the presentation and surrender of the coupons annexed to said bonds as they severally became due.

That the said bonds provided that in case of default for the period of four months in the payment of the interest on any of the said bonds the whole principal sum should become due and payable.

And that to secure the payment of the said bonds and the interest thereupon the said St. Louis and Southeastern Railway Company, on the 1st day of October, 1869, duly made, sealed with its common seal, and executed and delivered to Philo C. Calhoun and George Opdyke, of the city of New York, as trustees, a mortgage or deed of trust in and by which the said railway company conveyed unto the said trustees the aforesaid railway from East St. Louis to Shawneetown, situate, lying, and being in the State of Illinois, the length thereof being about one hundred and sixty miles, and also all the land and other property then owned or which should thereafter be acquired by the said railway company in connection with the said railway, and also all the property, real or personal franchises, rights, and things, of whatever name or nature, connected with or in any way appertaining to the said railway then owned or thereafter acquired.

That the said mortgage or deed of trust was prior to the 28th day of November, 1869, duly recorded in the counties of St. Clair, Clinton, Washington, Jefferson, Hamilton, Saline, and Gallatin, in the

State of Illinois, in which counties the said railway property was situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned, and is a first lien upon the aforesaid railway from East St. Louis to Shawneetown aforesaid, embracing one hundred and sixty miles of railway, more or less, and its appurtenances, including all the lands and the erections thereon, and all the equipments of the said railway company used upon or appertaining to the said railway, whether owned at the time of the making of the said mortgage or acquired at any time afterwards.

III. That the Evansville and Southern Illinois Railroad Company of Illinois was duly incorporated under and by virtue of an act of the Legislature of the State of Illinois, entitled "An act to incorporate the Evansville and Southern Illinois Railroad Company," passed the 26th of March, 1869, with power to construct, maintain, and operate a railway in the State of Illinois from McLeansboro', in the county of Hamilton, in the State of Illinois, by the way of Enfield and Carmi, Illinois, to the dividing line between Indiana and Illinois, a distance of about thirty-five miles, and that the said railroad company, by virtue of a joint resolution passed by the Congress of the United States of America, approved July 14, 1870, became possessed of the right to construct a bridge for railroad purposes across the Wabash river, a distance of about one-quarter of a mile.

IV. That by due authority of law the aforesaid St. Louis and Southeastern Railway Company and the aforesaid Evansville and Southern Illinois Railroad Company were upon February 21, 1871, consolidated into one body corporate, called and named The St. Louis and Southeastern Railroad Company of Illinois, the said body corporate succeeding to all the rights, privileges, franchises, and property of the said two constituent companies as fully as such corporations had possessed and enjoyed the same.

V. That the Evansville, Carmi and Paducah Railroad Company prior to the month of February, 1871, was a corporation duly organized under and in pursuance of the statutes of the State Indiana, and especially an act of the Legislature of said State entitled "An an act to provide for the incorporation of railroad companies," approved May 11, 1852, and the acts amendatory thereof and supplemental thereto, with power to construct, maintain, and operate a railway from Evansville, Indiana, to the line of the State of Illinois on the Wabash river to a junction with the railway of the Evansville and Southern Illinois Railroad Company, a distance of about thirty-two miles.

VI. That the aforesaid St. Louis and Southeastern Railroad Company of Illinois and the aforesaid Evansville, Carmi and Paducah Railroad Company of Indiana, by due authority of law, did,
17 on the 28th day of February, 1871, consolidate their said corporations into one body corporate, called and named the St. Louis and Southeastern Railway Company of Illinois and Indiana, the said last-named body corporate thereby becoming possessed of all the rights, privileges, franchises, and other property of

the said two companies as fully as such corporations had possessed and enjoyed the same.

That prior to the 1st day of March, 1871, there had been constructed, in whole or in part, by the aforesaid St. Louis and Southeastern Railroad Company, by the aforesaid Evansville and Southern Illinois Railroad Company, and by the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana, a railway extending from a point of connection with the before-described railway of the St. Louis and Southeastern Railway Company of Illinois, at or near McLeansboro', in the county of Hamilton, in the State of Illinois, via Enfield and Carmi to the Wabash river, and also a railroad bridge over the Wabash river, and also a continuation of the said railway from the easterly line of the State of Illinois to Evansville, in the State of Indiana, a distance in all of about sixty-seven miles.

And that on the 1st day of March, 1871, the said railway from McLeansboro, to Evansville, as well as the aforesaid railroad from East St. Louis to Shawneetown, was owned and possessed by the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana.

VII. That about the 1st day of March, 1871, the said St. Louis and Southeastern Railway Company of Illinois and Indiana, as thereto duly authorized by law, executed under its corporate seal its one thousand (1,000) bonds in the sum of one thousand dollars ($1,000) each, known as its Evansville division first-mortgage bonds, payable in gold coin of the United States on the 31st day of October, 1894, at its office or agency in the city of New York, with interest at the rate of seven per cent. per annum, payable in like gold coin on the first days of November and May in each year, on the presentation and surrender of the coupons annexed to said bonds as they severally became due.

That the said bonds provided that in case of default for a period of four months in the payment of interest on any of the said bonds the whole principal sum should become due and payable.

And that, to secure the payment of the said bonds and the interest thereupon, the said St. Louis and Southeastern Railway Company of Illinois and Indiana, on the first day of March, 1871, duly made, sealed with its common seal and executed and delivered to Philo C. Calhoun and George Opdyke, of the city of New York, as trustees, a mortgage or deed of trust, in and by which the said railway company conveyed unto the said trustees the aforesaid railway from McLeansboro', Illinois, to Evansville, Indiana, the length thereof being about sixty-seven miles, of which about thirty-five miles were situate, lying and being in the State of Illinois, and about thirty-two miles in the State of Indiana; and also all the land and other property then owned or which should thereafter be acquired by the said railway company in connection with the said railway; and also all the property, real or personal, franchises, rights, and things of whatever name or nature connected with or in any way appertaining to the said railway then owned or thereafter acquired.

That the said mortgage or deed of trust was, prior to the ninth day of April, 1871, duly recorded in the counties of White and Ham-

ilton, in the State of Illinois, and in the counties of Vanderburg and Posey, in the State of Indiana, in which counties the said railway property was situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned, and is a first lien upon the aforesaid railway from McLeansboro', Illinois, to Evansville, Indiana, embracing sixty-seven miles of railway and its appurtenances, including all the land and the erections thereon, and all the equipment of the said corporation used or appertaining to the said railway, whether owned at the time of the making of the said mortgage or acquired at any time afterwards.

VIII. That thereafter the said St. Louis and Southeastern Railway Company of Illinois and Indiana, by due authority of law, undertook the construction of a branch of its railway from Belle-
18 ville, in St. Clair county, Illinois, to O'Fallon, in the same county, and also the construction of certain other branches within the said county of St. Clair. And that on or before the 1st day of August, 1872, the said railway company was possessed of about seven miles of such branch railways in said county of St. Clair, with power to mortgage the same.

IX. That on or about the first day of August, 1872, the said St. Louis and Southeastern Railway Company of Illinois and Indiana, as thereto duly authorized by law, executed under its corporate seal its one hundred and five (105) bonds in the sum of one thousand dollars ($1,000) each, known as its branch series first-mortgage bonds, payable on the 31st day of October, 1894, at its office or agency in the city of New York, with interest at the rate of seven per cent. per annum, payable in gold coin of the United States on the first days of November and May in each year, on the presentation and surrender of the coupons annexed to said bonds as they severally become due.

That the said bonds provided that in case of default for a period of four months in the payment of interest on any of the said bonds the whole principal sum should become due and payable.

And to secure the payment of the said bonds and the interest thereupon the said St. Louis and Southeastern Railway Company, on the first day of August, 1872, duly made and sealed with its common seal, executed and delivered to Philo C. Calhoun and George Opdyke, of the city of New York, as trustees, a mortgage or deed of trust, in and by which the said railway company conveyed unto the said trustees the aforesaid branch railway from Belleville to O'Fallan, in said county of St. Clair, and the other branch railways of the said company in the said county of St. Clair, being in all about seven miles in length, and also all the lands and other property which should thereafter be acquired by the said railway company in connection with the said branch railway from Belleville to O'Fallon aforesaid, and the other branch railways in St. Clair county aforesaid belonging to said railway company, embracing a total length of seven miles of railway; and also all the property, real or personal, franchises, rights, and things, of whatever name or nature, connected with or in any way appertaining to the said railway.

That the said mortgage or deed of trust was, prior to the sixteenth day of October, 1872, duly recorded in the county of St. Clair, in the State of Illinois, in which county the said railway property is situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned, and is a first lien upon the said branch railway from Belleville to O'Fallon, in the county of St. Clair, and upon the other branch railways of the said company in the said county of St. Clair, embracing a total length of seven miles of railway.

X. That all the aforesaid first-mortgage bonds, to wit, the series of $2,250,000 of the first-mortgage bonds of the St. Louis & Southeastern Railway Company of Illinois, the series of $1,000,000 of the first-mortgage bonds of the Evansville Division of the St. Louis and Southeastern Railway Company of Illinois and Indiana, and the series of $105,000 of the first-mortgage branch series bonds of the last-named railway company were from time to time issued, sold, and negotiated by the railway companies, the makers thereof respectively, and transferred to various purchasers for value, and that all the said bonds are now outstanding and valid and subsisting obligations and held by various individuals, firms, and bodies corporate who became and are now the holders and bearers thereof, and entitled to the moneys therein mentioned and agreed to be paid.

XI. That thereafter the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana, by due authority of law, did consolidate its said corporation with certain other corporations duly organized and existing within the States of Kentucky and Tennessee, to wit, The Evansville, Henderson and Nashville Railroad Company, of the State of Kentucky; The St. Louis and Southeastern Railway Company, Kentucky Division, of the State of Kentucky, and The Nashville, Chicago and St. Louis Railroad Company, of the State of Tennessee, and that the said corporations thereby became one body corporate, called and named the St. Louis and Southeastern Railway Company (Consolidated), the last-named body corporate thereby becoming possessed of all the rights, privileges, fran-
19 chises, and property of the hereinbefore-described corporations, as fully as such corporations had theretofore possessed and enjoyed the same.

That prior to the 1st day of October, 1872, there had been constructed, in whole or in part, by the aforesaid St. Louis and Southeastern Railway Company (Consolidated), or by its constituent corporations, a railroad extending from East St. Louis, in the State of Illinois, via McLeansboro', Illinois, to Shawneetown, Illinois, upon the Ohio river, and also from McLeansboro' aforesaid to Evansville, Indiana, upon the Ohio river, and also from Henderson, Kentucky, upon the Ohio river, to Nashville, Tennessee, and that on the 1st day of October, 1872, the said railway from East St. Louis to Shawneetown, Illinois, and to Nashville, Tennessee, was owned and possessed by the aforesaid St. Louis and Southeastern Railway Company (Consolidated).

XII. That on or about the 1st day of October, 1872, the said St. Louis and Southeastern Railway Company (Consolidated), as thereto duly authorized by law, executed under its corporate seal, and duly issued its bonds to the aggregate amount of four million nine hundred and twenty-two thousand dollars ($4,922,000), of a series or class known as its first consolidated mortgage bonds, payable in gold coin of the United States on the 1st day of November, in the year 1902, at its office or agency in the city of New York, with interest at the rate of seven per cent. per annum, payable in like gold coin on the 1st days of February and August in each year, on the presentation and surrender of the coupons annexed to said bonds as they severally became due.

That the said bonds provided that in case of default for a period of four months in the payment of the interest on any of the said bonds the whole principal sum should become due and payable.

And to secure the payment of the said bonds and the interest thereupon the St. Louis aad Southeastern Railway Company (Consolidated), on the 1st day of October, 1872, duly made and sealed with its common seal, and executed and delivered to Philo C. Calhoun and George Opdyke, of the city of New York, as trustees, a mortgage or deed of trust, in and by which the said railway company conveyed unto the said trustees the aforesaid railway from East St. Louis, Illinois, to Shawneetown, Illinois, and also to Nashville, Tennessee, the length thereof being, as near as may be, four hundred and thirty-four $\frac{0\,6}{1\,0\,0}$ miles, of which two hundred and one $\frac{9}{1\,0}$ (201.9) miles were situate in the State of Illinois, and thirty-one $\frac{7\,3}{1\,0\,0}$ (31.73) miles in the State of Indiana, and one hundred and fifty (150) miles in the State of Kentucky, and fifty $\frac{4\,3}{1\,0\,0}$ (50.43) miles in the State of Tennessee, and also all the land and other property which should thereafter be acquired by the said railway company in connection with the said railway, and also all the property, real or personal, franchises, rights, and things of whatever name or nature connected with or in any way appertaining to the said railway.

That the said mortgage or deed of trust was, prior to the first day of November, 1872, duly recorded in all the counties within the States of Illinois and Indiana within which the said railway property, or any portion thereof, was situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned and is a lien upon the whole of the aforesaid railway and its equipment at any time owned by the said corporation within the States of Illinois and Indiana, subject, however, to the lien heretofore ascertained of the mortgages hereinbefore described, and also a lien upon the said railways in the States of Kentucky and Tennessee, subject to prior liens.

XIII. That all the aforesaid consolidated bonds, amounting in the aggregate to the sum of four million nine hundred and twenty-two thousand dollars ($4,922,000), were from time to time issued, sold, and negotiated by the railway company, the maker thereof, and transferred to various purchasers for value, and that all the said

bonds are now outstanding and valid and subsisting obligations, and held by various individuals, firms, and bodies corporate who became and are now the holders and bearers thereof and entitled to the moneys therein mentioned and agreed to be paid.

XIV. That on or about the first day of August, 1874, the said St. Louis and Southeastern Railway Company (Consolidated) made and delivered to the said P. C. Calhoun and George Opdyke a chattel mortgage upon all its equipment, rolling-stock, and personal property in the States of Illinois and Indiana, in trust to secure the holders of the said first and consolidated mortgage bonds according to their respective priorities, and thereby constituted a good and valid lien in their favor upon the property so mortgaged.

XV. That the said St. Louis and Southeastern Railway Company (Consolidated), or its predecessors or others in its behalf, duly paid the interest maturing upon all the bonds hereinbefore described, as the same was demanded, down to and including the interest upon the aforesaid first-mortgage bonds maturing on the first day of May, 1873, and also duly paid all the interest maturing upon the said consolidated mortgage bonds, as the same was demanded, down to and including that maturing the 1st day of August, 1873, but that sundry coupons maturing on or before the last-mentioned dates were not presented for payment and have not been paid, the amount of which is as hereinafter stated.

That the said St. Louis and Southeastern Railway Company (Consolidated), on the first of November, 1873, and on the first days of May and November in each succeeding year, failed to pay the installments in gold coin of the United States for each of the said interest periods maturing at such times on the aforesaid first-mortgage bonds; that no part of the said installments of interest has been paid, except as hereinafter mentioned, although the said interest was duly demanded by the holders of the said bonds and coupons thereon when and where the said interest became due and payable according to the tenor and effect of the said bonds; that thereafter, in the suit instituted by the said trustees, Calhoun and Opdyke, to foreclose the aforesaid consolidated mortgage bearing date October 1st, 1872 (being one of the causes consolidated by this decree), J. F. Alexander was appointed receiver of the mortgaged property, and entered into possession of the same and operated the said railways; that thereafter the said Alexander departed this life, and James H. Wilson was appointed and continued to act as receiver in his stead; that the said receivers have applied a portion of the income coming to their hands as such receivers to the payment of the aforesaid installments of interest, with the effect that all interest which accrued upon the aforesaid mortgage bonds on the first day of November, 1873, and the first day of May, 1874, which has been demanded from the said receivers, has been paid, but certain coupons, the payment of which has not been demanded of the said receivers, remain unpaid.

That there still remains unpaid, of the interest due upon the aforesaid first-mortgage bonds, the following sums in gold coin, namely:

Interest due on 1st day of November, 1870	$35 00
Interest due on 1st day of November, 1871	280 00
Interest due on 1st day of November, 1872	70 00
Interest due on 1st day of May, 1873	210 00
Interest due on 1st day of November, 1873	1,750 00
Interest due on 1st day of May, 1874	2,780 00
Interest due on 1st day of November, 1874	117,425 00
Interest due on 1st day of May, 1875	117,425 00
Interest due on 1st day of November, 1875	117,425 00
Interest due on 1st day of May, 1876	117,425 00
Interest due on 1st day of November, 1876	117,425 00
Interest due on 1st day of May, 1877	117,425 00
Interest due on 1st day of November, 1877	117,425 00
Interest due on 1st day of May, 1878	117,425 00
Interest due on 1st day of November, 1878	117,425 00
Interest due on 1st day of May, 1879	117,425 00
Interest due on 1st day of November, 1879	117,425 00
Interest due on 1st day of May, 1880	117,425 00

That interest is due upon the respective amounts above
21 named from the respective dates of the maturity of such installments of interest at the rate of seven per centum per annum.

That, however, a credit is to be made upon the amount so ascertained of the sum of eighty-five thousand dollars ($85,000), being amount paid by the receiver herein, on account of the coupons due November 1, 1874.

XVI. That the said St. Louis and Southeastern Railway Company (Consolidated), on the 1st day of February, 1874, and on the 1st day of August, 1874, and on the 1st days of February and August in each succeeding year, made default in the payment of the installments of interest coming due, at the said respective times, upon the bonds secured by the said consolidated mortgage (the said installment of interest due February 1st, 1874, being $145,880, and thereafter each of said installments of interest, amounting to the sum of one hundred and seventy-two thousand two hundred and seventy dollars ($172,270) in gold coin of the United States), and that no part of the said interest has been paid by the said company or by any one for it, although the said interest was duly demanded by the holders of the said bonds and coupons thereon when and where the said interest became due and payable according to the tenor and effect of the said bonds; that interest is due on such installments of interest from their respective dates of maturity at the rate of seven per cent. per annum.

XVII. That the principal of the aforesaid first-mortgage bonds has become due and payable by reason of the said default on the part of the railway company to pay the interest thereon as the same matured and by reason of the action of the trustees in the said mortgages in declaring the said principal due; that the amount due by

the said St. Louis and Southeastern Railway Company (Consolidated) to the holders of the said first-mortgage bonds and of the unpaid coupons thereon is as follows, namely:

The amount due for and on account of the principal of the said first-mortgage bonds is three million three hundred and fifty-five thousand dollars ($3,355,000), and that the amount of interest upon the said bonds unpaid, whether represented by coupons or otherwise, and including interest upon said unpaid interest, did on the 1st day of August, 1880, amount to the sum of one million six hundred and twenty-seven thousand six hundred and thirty-seven $\frac{72}{100}$ dollars ($1,627,637.72), making the whole amount due for principal and interest on the 1st of August, 1880, the sum of four million nine hundred and eighty-two thousand six hundred and thirty-seven $\frac{72}{100}$ dollars ($4,982,637.72).

XVIII. That the holders of the aforesaid consolidated mortgage bonds, being secured as well (under the terms of the mortgage securing the said bonds) upon certain railways within the States of Kentucky and Tennessee, did on or about the month of October, 1874, institute suits in the States of Kentucky and Tennessee for the enforcement of the lien of the said mortgage upon the railways within the said States respectively, and did proceed in the said suits to decrees and sales of the said mortgaged property within said States with the result that they have received from the proceeds of the said sales the following sums, namely:

From the proceeds of the sale of the mortgaged premises within the State of Kentucky the sum of fifty thousand dollars ($50,000), paid on or about the 29th day of July, 1879, and from the sale of the mortgaged property within the State of Tennessee the sum of four hundred and twenty-eight thousand eight hundred and ninety-nine $\frac{89}{100}$ dollars ($428,899.89), the same having been paid on or about the 29th day of July, 1879.

That the principal of the aforesaid consolidated mortgage bonds has become due and payable by reason of the said default on the part of the railway company to pay the interest thereon as the same matured and by reason of the action of the trustees in the said mortgages in declaring the said principal due.

That the amount due by the said St. Louis and Southeastern Railway Company (Consolidated) to the holders of the said con-
22 solidated bonds and of the unpaid coupons thereon, independently of the payments made as aforesaid, is as follows:

The amount due for and on account of the principal sum of the said bonds is the sum of four million nine hundred and twenty-two thousand dollars ($4,922,000), and the amount of interest upon the said bonds unpaid, whether represented by coupons or otherwise, including interest on such unpaid interest, on the 1st day of August amounted to the sum of three million forty-eight thousand seven hundred and ninety-six $\frac{82}{100}$ dollars ($3,048,796.82), and that, after crediting the payments above made, the whole amount due to the holders of the said consolidated mortgage bonds and coupons, with interest to the 1st day of August, 1880, is the sum of seven million

four hundred and sixty-one thousand eight hundred and sixty-six $\frac{93}{100}$ dollars ($7,461,866.93).

XIX. That the complainants in these consolidated suits are entitled to have all of the above-named sums paid into court for the benefit of the legal holders of said bonds and coupons.

XX. That the said George Opdyke departed this life on June 12th, 1880, and that all the rights, powers, and duties of the said trustees conferred or imposed by the said several mortgages survived to and became and are vested in said Philo C. Calhoun, as sole surviving trustee, and that he holds the said mortgage liens as trustee for the joint and equal benefit and security of the legal holders of the bonds described in and delivered under and in accordance with the several aforesaid mortgages, according to the priorities hereinbefore established.

XXI. It is further found by the court that all the allegations and averments of the bills of complaint filed in the said causes hereby consolidated are true and that the equities are with the complainants in such causes.

It is further found by the court that for the purpose of carrying on the railway business, and of performing its public duties as carrier of persons and property, and as a transporter of the United States mails, the said St. Louis and Southeastern Railway Company (Consolidated) and its constituent corporations have, since the completion of the lines of railway within the States of Illinois and Indiana, become the owners, and the said St. Louis and Southeastern Railway Company (Consolidated) is now the owner of a large quantity of rolling-stock, implements, machineries, tools, furniture, and other personal property, equipment used in connection with the operation of the said railway, which equipment and personality have been purchased indiscriminately out of the net earnings and sales of bonds, and have been used during a period of nearly ten years, and have been commingled and renewed from time to time, as appurtenant to the whole line of railway, without any specific appropriation of any particular equipment or personality to any specific division or portion of the said railway.

And it is further found by the court that the several divisions of the said railway described in the mortgages aforesaid, and extending from the westerly boundary of the State of Illinois easterly to two points upon the Ohio river, one at Shawneetown, within the State of Illinois, and one at Evansville, within the State of Indiana, constitute an important line of railway for through freight and passenger traffic; that it has always been operated as a unit, and all its earnings have been treated with the consent of all of its bonded creditors as a common fund, without any specific division of the said income upon any basis whatever, and that the same is of greater value as an entirety than when separated into sections or divisions, as the same is mortgaged, and that the said divisions are each necessary to the other.

And it is further found by the court that the said railways are incapable of being sold separately or in divisions without material injury to their value, and that it will be for the best protection and

advantage of all the creditors of the said corporation, as well as for the public, to preserve the unity of the said line, and to make sale of the said mortgaged premises in such manner as will best preserve its entirety, while adequately preserving the liens of all entitled, according to their legal priorities, in accordance with equitable principles.

XXII. Therefore it is hereby ordered, adjudged, and decreed
23 as follows, namely: Unless the said St. Louis and Southeastern Railway Company (Consolidated), defendant herein, or Philo C. Calhoun, as surviving trustee under the mortgage securing the said consolidated mortgage bonds, or some of the other defendants, shall, on or before the first day of October, 1880, pay into this court in this cause the said sum aforesaid, to wit, the sum of $4,982,637.72, being the amount due the holders of the bonds secured by the aforesaid first mortgages, bearing date the 1st day of October, 1869, the 1st day of March, 1871, and the 1st day of August, 1872, respectively, and of the unpaid interest thereon, together with interest thereon from August 1st, 1880, and together with the costs herein to be taxed in that behalf, then the said premises shall be sold as hereinafter directed, and the equity of redemption of the St. Louis and Southeastern Railway Company (Consolidated) and of all the parties to this cause in the premises mentioned and conveyed in the said several mortgages or deeds of trust forever barred and foreclosed.

XXIII. It is further ordered, adjudged, and decreed that unless the said St. Louis and Southeastern Railway Company (Consolidated) or some of the other defendants shall, on or before the first day of October, 1880, pay into this court in this cause the sum of $7,461,866.93, being the amount due to the holders of the bonds secured by the aforesaid first consolidated mortgage, bearing date October 1st, 1872, and of the unpaid coupons thereon, together with interest thereon from August 1st, 1880, and together with costs herein to be taxed in that behalf, then the said premises shall be sold as hereinafter directed, and the equity of redemption of the said railway company, defendant, and of all the parties to this cause in the premises mentioned and conveyed in the said mortgage or deed of trust to Philo C. Calhoun, surviving trustee, shall be forever barred and foreclosed.

XXIV. And it being further found by the court that a portion of the mortgaged property in this decree described and referred to is situated in the State of Indiana and without the State of Illinois, and that the complainants in these consolidated causes have heretofore instituted ancillary suits in the circuit court of the United States for the district of Indiana for the foreclosure of the aforesaid mortgages and the sale of the said mortgaged premises, so far as the same are situated in the State of Indiana; and that the receiver heretofore appointed in this cause has also been appointed receiver of the said mortgaged premises within the State of Indiana; and that a decree in the said ancillary suit is necessary to make a sale of the said mortgaged property in the State of Indiana, free from judgments and other liens in the said State; and that a decree, similar in all respects to this decree, is to be presented to the said United

States circuit court for the district of Indiana for entry by the said court for the purposes therein expressed and as ancillary to this decree:

It is thereupon further ordered, adjudged, and decreed by the court that in case default shall be made in the payment of all or any of the several sums of money hereinbefore adjudged to be due to the holders of the bonds secured by the respective mortgages in this decree described, then all and singular the property and effects, rights, and franchises of the said St. Louis and Southeastern Railway Company (Consolidated) and of the several original or constituent companies as aforesaid shall be sold by John A. Jones, Esq., a master in chancery of this court, and by W. P. Fishback, Esq., a master in chancery of the circuit court of the United States for the district of Indiana, as special commissioners appointed for such purposes by this court, upon their being similarly appointed by the decree of the said circuit court of the United States for the district of Indiana in the said ancillary suits.

And inasmuch as the said special commissioners are also to be named as special commissioners for the sale of the mortgaged premises within the State of Indiana by an ancillary decree to be entered in the United States circuit court for the district of Indiana, it is further ordered and decreed that the said special commissioners, at the same time and place and concurrently with the execution of the ancillary decree of the said circuit court of the United States —

of Indiana for the sale of the said mortgaged property, shall
24 execute this decree, and that they shall make sale of the said
mortgaged property, effects, rights, and franchises at public auction to the highest and best bidders therefor, in the city of Springfield, Illinois, if such place is also named in such ancillary decree, at such place in said city, and at such time or times as they may appoint, having first given notice of the time, place, and terms of such sale, with a description of the property to be sold by advertisement, to be published not less than once a week for six weeks in one or more daily newspapers published in each of the cities of New York, State of New York; of St. Louis, State of Missouri; of Chicago, State of Illinois, and of Indianapolis, State of Indiana.

XXV. And it is further ordered, adjudged, and decreed that in case a sale of the said mortgaged property shall be made hereunder the said property shall be sold absolutely and without the privilege of redemption, free and clear, and discharged of and from all contracts, leases, and agreements made by the said St. Louis and Southeastern Railway Company (Consolidated), or any of its constituent corporations, with any persons or corporation since the execution and delivery of the said mortgages or deeds of trust hereinabove set forth, except that nothing in this decree contained shall be held to bar or in any way affect the rights or equities, if any, of the Cairo and Vincennes Railroad Company, or of the assigns or grantees of that company, or of the successors in interest of said railroad company, in relation to any estate or the joint use of the tracks, depot grounds, and bridge over the Little Wabash river, at or near Carmi,

in the county of White, State of Illinois, heretofore jointly used by the said Cairo and Vincennes Railroad Company and the St. Louis and Southeastern Railway Company (Consolidated), under certain contracts between the said companies or their representatives, or by virtue of any deed or deeds from any person or persons touching the subject-matter.

XXVI. And it is further ordered, adjudged, and decreed that the said sale be made subject to all sums legally due for taxes, which are an absolute legal lien upon the property of the said company prior to the said mortgages, and that the terms of such sale shall be as follows:

The sum of one hundred and fifty thousand dollars ($150,000) in cash shall be paid to the said commissioners by any accepted bidder at the time of sale. The remainder of the bid shall be paid at the time and place to be fixed by the said commissioners upon the confirmation of the sale by the court, either in money or in any of the bonds secured by the aforesaid three first mortgages, or partly in money and partly in bonds, in any case the said bonds being taken as cash for such dividends as they would be entitled to from such bid, according to the division hereinafter stated.

And if such sale shall be for a greater sum than the amounts due upon the said bonds secured by the aforesaid three first mortgages, then the said commissioner shall accept in payment of such balance the aforesaid bonds secured by the said mortgage to Philo C. Calhoun and George Opdyke, as trustees, bearing date October 1st, 1872, as far as offered, taking such bonds as cash for such dividend as they would be entitled to from such bid.

The said commissioners shall require from all bidders at the said sale, prior to the making of any bid, a deposit with them of the sum of one hundred thousand dollars ($100,000) in money, or of five hundred thousand dollars at par in the bonds secured by one or more of the aforesaid first mortgages upon the said property as security for the bid in case the property should be struck off to such bidder or bidders, which deposit shall be absolutely forfeited to the uses of the trusts in favor of the complainants, if the bidder so depositing the same shall fail to carry out his purchase in accordance with the terms of sale and the order of this court, in case the property is struck off to him; and the said commissioners shall make such further terms of such sale as may be usual and as may be required by the complainants' solicitors.

The said commissioners upon receiving any of the said bonds or coupons secured by the several mortgages in this decree described, on account of any purchase made as aforesaid, shall, if the bonds and coupons are taken at their full value with interest, cancel the said bonds and coupons; but if the said bonds and coupons are taken for any fractional part of their full face value, then the said commissioners shall stamp upon the said bonds and coupons the the amount or percentage thereof at which the same are so taken, and return the same to the owners or holders thereof, who shall thereafter hold them solely for the portion thereof which shall not have been so paid through the said sale.

XXVII. It is further ordered, adjudged, and decreed that the said commissioners make a report of the said sale to this court, and also to the said United States circuit court for the district of Indiana, and that upon confirmation thereof by this court and by the said United States circuit court for the district of Indiana, and the full payment of the whole of the purchase-money, that the said John A. Jones, Esq., and W. P. Fishback, Esq., as special commissioners, shall convey to the purchaser or purchasers at such sale, or their assigns, all and singular the said railways and property of the said St. Louis and Southeastern Railway Company (Consolidated) hereinbefore directed to be sold by them, by a good and sufficient deed or deeds therefor, which said deed or deeds when so made and delivered shall vest in the grantee or grantees all the right, title, estate, interest, property, and equity of redemption of, in, and to all and singular the real and personal estate, property, premises, and franchises therein described, in fee-simple, forever, and shall entitle the said grantee or grantees to the possession thereof, and shall be a perpetual bar, both in law and equity, against any and every claim of the said St. Louis and Southeastern Railway Company (Consolidated), and its successors and assigns, and against all and every person or corporation claiming or to claim the said railway premises and property, appurtenances, franchises, rolling-stock, and equipment, machinery, materials, and supplies, or any part thereof, under or through the said St. Louis and Southeastern Railway Company (Consolidated), or any of its constituent corporations, or any other party to this cause, except as herein otherwise expressly provided.

XXVIII. And it is further ordered, adjudged, and decreed that James H. Wilson, the receiver heretofore appointed in this cause, and now in possession of the said railway, property, premises, and appurtenances, shall, upon presentation to him of said deed, deliver to the grantee or grantees therein named all and singular the said railway and property, as described in said deed; also all choses in action, contracts, agreements, property, real and personal, acquired or held by the said receiver as such; but all moneys in his hands and possession as such receiver, and that may be so adjudged by this court upon the final settlement of his accounts as such receiver shall not pass by such sale, but shall be retained by the said receiver to be applied as may be ordered by this court.

That any of the parties to this cause who may be in possession of the said premises or any part thereof and any person or corporation who since the institution of this suit shall have come into possession of the same shall deliver the possession thereof to the said grantee or grantees on the production of the said commissioners' deed, and especially shall so deliver all books, accounts, records, legal and other papers, choses in action, claims, properties, and fixtures of every nature in his or their possession or under his or their control, except that the receiver aforesaid shall not be required to surrender to such grantee or grantees the books and papers pertaining to his receivership accounts until his final settlement and discharge, and until so ordered by this court.

XXIX. It is further ordered, adjudged, and decreed that the said

special commissioners, after retaining from the proceeds of the sale hereinbefore directed to be made the amount of their fees and expenses upon such sale for all services rendered by them in this cause or pursuant to this decree, hereinafter to be fixed by the court if not agreed upon by the parties, shall forthwith pay out of the net proceeds as follows:

First. The costs of this suit, including clerk's costs and all other disbursements in this cause, to be taxed in favor of the solicitors of the respective complainants in the causes hereby consolidated.

Second. Out of the surplus, if any, to pay James H. Wilson, receiver, any sums of money that may be due and owing by him over and above the funds in his hands on account of the operation and maintenance of the said railways, including all the attorneys' and counsel fees incurred by him, and compensation to all attorneys, solicitors, and counsel for services rendered to such receiver in the prosecution or defense of any suits or proceedings brought by or against him as such receiver.

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Third. Out of the surplus, if any, to pay to Philo C. Calhoun and to the legal representatives of George Opdyke, deceased, the trustees in the aforesaid mortgages, their proper compensation for the services of the said trustees in the said mortgages, and for their disbursements, other than counsel fees, incurred in and about the said mortgages and the institution and prosecution of the suits hereby consolidated; and also to pay to the said trustees, or their survivor, the amount of the counsel fees incurred by them as such trustees in the institution and prosecution of the causes hereby consolidated, the amount so paid to be applied by such trustees, or their survivor, to the payment of such counsel fees, and also to pay to Messrs. Judd & Whitehouse their fees and disbursements as solicitors and counsel for the complainants in the first above-entitled cause; all of the said amounts to be such as shall be hereafter determined by the court.

Fourth. Out of the surplus, if any, to pay the holders of the bonds and coupons secured by the aforesaid three first mortgages executed by the St. Louis and Southeastern Railway Company of Illinois and the St. Louis and Southeastern Railway Company of Illinois and Indiana, and known as the first mortgage, the first mortgage Evansville division, and the first mortgage branch series bonds, the amount of the said bonds and interest thereon hereinbefore adjudged to be due, together with interest to the time of the said sale; and in case there shall not be enough to pay them in full, then there shall be paid to the holders of the said coupons remaining outstanding and maturing on or before the first day of November, 1874 (being coupons of classes in which the other coupons have been paid, in whole or in part), the principal and interest of their coupons, and then to the holders of the said bonds and of the other coupons thereof secured by the first mortgage upon the railway from East St. Louis to Shawneetown, bearing date the first day of October, 1869, twenty-two hundred and fifty thirty-three hundred and fifty-fifths ($\frac{2250}{3350}$) of the said surplus, and there shall be paid to the holders of the said first-mortgage Evansville division bonds and the other coupons thereof one thousand thirty-three hundred and fifty-fifths

XXVII. It is further ordered, adjudged, and decreed that the said commissioners make a report of the said sale to this court, and also to the said United States circuit court for the district of Indiana, and that upon confirmation thereof by this court and by the said United States circuit court for the district of Indiana, and the full payment of the whole of the purchase-money, that the said John A. Jones, Esq., and W. P. Fishback, Esq., as special commissioners, shall convey to the purchaser or purchasers at such sale, or their assigns, all and singular the said railways and property of the said St. Louis and Southeastern Railway Company (Consolidated) hereinbefore directed to be sold by them, by a good and sufficient deed or deeds therefor, which said deed or deeds when so made and delivered shall vest in the grantee or grantees all the right, title, estate, interest, property, and equity of redemption of, in, and to all and singular the real and personal estate, property, premises, and franchises therein described, in fee-simple, forever, and shall entitle the said grantee or grantees to the possession thereof, and shall be a perpetual bar, both in law and equity, against any and every claim of the said St. Louis and Southeastern Railway Company (Consolidated), and its successors and assigns, and against all and every person or corporation claiming or to claim the said railway premises and property, appurtenances, franchises, rolling-stock, and equipment, machinery, materials, and supplies, or any part thereof, under or through the said St. Louis and Southeastern Railway Company (Consolidated), or any of its constituent corporations, or any other party to this cause, except as herein otherwise expressly provided.

XXVIII. And it is further ordered, adjudged, and decreed that James H. Wilson, the receiver heretofore appointed in this cause, and now in possession of the said railway, property, premises, and appurtenances, shall, upon presentation to him of said deed, deliver to the grantee or grantees therein named all and singular the said railway and property, as described in said deed; also all choses in action, contracts, agreements, property, real and personal, acquired or held by the said receiver as such; but all moneys in his hands and possession as such receiver, and that may be so adjudged by this court upon the final settlement of his accounts as such receiver shall not pass by such sale, but shall be retained by the said receiver to be applied as may be ordered by this court.

That any of the parties to this cause who may be in possession of the said premises or any part thereof and any person or corporation who since the institution of this suit shall have come into possession of the same shall deliver the possession thereof to the said grantee or grantees on the production of the said commissioners' deed, and especially shall so deliver all books, accounts, records, legal and other papers, choses in action, claims, properties, and fixtures of every nature in his or their possession or under his or their control, except that the receiver aforesaid shall not be required to surrender to such grantee or grantees the books and papers pertaining to his receivership accounts until his final settlement and discharge, and until so ordered by this court.

XXIX. It is further ordered, adjudged, and decreed that the said

special commissioners, after retaining from the proceeds of the sale hereinbefore directed to be made the amount of their fees and expenses upon such sale for all services rendered by them in this cause or pursuant to this decree, hereinafter to be fixed by the court if not agreed upon by the parties, shall forthwith pay out of the net proceeds as follows:

First. The costs of this suit, including clerk's costs and all other disbursements in this cause, to be taxed in favor of the solicitors of the respective complainants in the causes hereby consolidated.

Second. Out of the surplus, if any, to pay James H. Wilson, receiver, any sums of money that may be due and owing by him over and above the funds in his hands on account of the operation and maintenance of the said railways, including all the attorneys'
26 and counsel fees incurred by him, and compensation to all attorneys, solicitors, and counsel for services rendered to such receiver in the prosecution or defense of any suits or proceedings brought by or against him as such receiver.

Third. Out of the surplus, if any, to pay to Philo C. Calhoun and to the legal representatives of George Opdyke, deceased, the trustees in the aforesaid mortgages, their proper compensation for the services of the said trustees in the said mortgages, and for their disbursements, other than counsel fees, incurred in and about the said mortgages and the institution and prosecution of the suits hereby consolidated; and also to pay to the said trustees, or their survivor, the amount of the counsel fees incurred by them as such trustees in the institution and prosecution of the causes hereby consolidated, the amount so paid to be applied by such trustees, or their survivor, to the payment of such counsel fees, and also to pay to Messrs. Judd & Whitehouse their fees and disbursements as solicitors and counsel for the complainants in the first above-entitled cause; all of the said amounts to be such as shall be hereafter determined by the court.

Fourth. Out of the surplus, if any, to pay the holders of the bonds and coupons secured by the aforesaid three first mortgages executed by the St. Louis and Southeastern Railway Company of Illinois and the St. Louis and Southeastern Railway Company of Illinois and Indiana, and known as the first mortgage, the first mortgage Evansville division, and the first mortgage branch series bonds, the amount of the said bonds and interest thereon hereinbefore adjudged to be due, together with interest to the time of the said sale; and in case there shall not be enough to pay them in full, then there shall be paid to the holders of the said coupons remaining outstanding and maturing on or before the first day of November, 1874 (being coupons of classes in which the other coupons have been paid, in whole or in part), the principal and interest of their coupons, and then to the holders of the said bonds and of the other coupons thereof secured by the first mortgage upon the railway from East St. Louis to Shawneetown, bearing date the first day of October, 1869, twenty-two hundred and fifty thirty-three hundred and fifty-fifths ($\frac{2}{3}\frac{2}{3}\frac{5}{5}\frac{0}{0}$) of the said surplus, and there shall be paid to the holders of the said first-mortgage Evansville division bonds and the other coupons thereof one thousand thirty-three hundred and fifty-fifths

($\frac{1000}{3355}$) of the said surplus, and there shall be paid to the holders of the said first-mortgage branch series bonds and the other coupons thereof one hundred and five thirty-three hundred and fifty-fifths ($\frac{105}{3355}$) of the said surplus.

Fifth. The surplus, if any, after paying the said first-mortgage bonds and interest, shall be distributed *pro rata* between the holders of the said four million nine hundred and twenty-two thousand dollars ($4,922,000) at par of the said consolidated mortgage bonds secured by the said mortgage and of the coupons thereof, first, however, paying the principal and interest of any of the said coupons still outstanding and maturing on or before the first day of August, 1873.

Sixth. The surplus, if any, which remains after the payment aforesaid shall be paid into this court for distribution under the further order of this court.

XXX. The description of the property the sale of which is hereby ordered is as follows:

All the line or lines of railway of the St. Louis and Southeastern Railway Company (Consolidated) situate, lying, and being in the counties of St. Clair, Clinton, Washington, Jefferson, Hamilton, Saline, Gallatin, and White, in the State of Illinois, and in the counties of Posey and Vanderburg, in the State of Indiana, which railway is more particularly described as follows:

A line of railway beginning at East St. Louis, at a point upon the Mississippi river, and running thence easterly, by the way of Belleville, Mascoutah, Nashville, Ashley, and Mount Vernon, to McLeansboro', and thence one line of said railway running southeasterly, by the way of Equality, to a point upon the Ohio river at Shawneetown, and another line running easterly from McLeansboro' aforesaid, by the way of Carmi, to a point upon the Wabash river, and thence over a bridge erected by the said railway company over the Wabash river, by the way of Mount Vernon, to a point upon the Ohio river at the city of Evansville, and also a branch railway running northerly from Belleville aforesaid to
27 O'Fallon, in the county of St. Clair, in the State of Illinois, and certain other branches within the said county of St. Clair, in the State of Illinois; the said lines of railway, with their sidings, embracing a total length of two hundred and thirty-five (235) miles, more or less.

And also all switches, turnouts, crossings, and sidings, and all other branches and extensions of the said railway or railways constructed and operated in connection therewith;

And also all rights of way, bridges, depot grounds, land, all depots and station-houses, engine-houses, car-houses, grain-houses, wood-houses, coal-houses, and all other buildings, and all fences, trestle, and culverts appertaining to the railways above named, and all car shops and machine shops, and also all kinds of machinery and tools owned by the said company for use in connection with the said railways, and also all locomotives, tenders, cars, or other rolling-stock and equipment, and all implements, fuel, and materials for the construction, operation, repairing, and replacing of the said railways or

any of the said branches, and all other property of every kind, nature, and description owned by the said railway company, and also all franchises connected with or relating to the said railways at any time owned, possessed, or acquired by the said St. Louis and Southeastern Railway Company (Consolidated), and also all the franchises and property of the corporations united in the consolidation of the last-named railway company—

Together with all and singular the tenements and appurtenances thereunto belonging and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, except that the rent accruing from the lessee now in possession of the said railways from the 1st day of July, 1880, to the time when the deed shall be delivered under the said sale, or proportionately accruing up to such time, shall not pass by such sale, but shall go to the receiver of the mortgaged premises;

And also all the estates, rights, titles, and interests whatsoever, as well at law as in equity, of the said St. Louis and Southeastern Railway Company (Consolidated) of, in, and to the same.

XXXI. And it is further ordered and decreed that William F. Whitehouse and James T. Jones be, and they hereby are, appointed special commissioners to take proof, before or after the said sale, of the identity of the bonds and coupons secured, respectively, under the several mortgages heretofore described in this decree for the purpose of determining the rights of the holders thereof under the distribution of the proceeds of the sale hereby ordered, and to report thereon to this court, and that for such purpose they give notice by public advertisement in one or more newspapers published in the said cities of New York, Chicago, and Indianapolis, fixing a place at which such bonds and coupons may be presented to either of them and a time within which they shall be so presented with proof of their identity; and it is ordered that the said commissioners, or either of them, may attend at any place within or without the United States for the more convenient taking of proof as such commissioners; and it is further ordered that bonds secured by the aforesaid mortgages, duly identified, may be delivered to such commissioners to be used as part payment of any bid at any sale made under this decree and shall be allowed as part payment of such bid to the extent of their net value under such sale, as in this decree provided; and it is further ordered that the said commissioners shall cause to be stamped upon all the bonds so used in payment of such bid the amount of the dividend so received thereon and cancel the coupons thereon.

XXXII. And it is further ordered that the causes hereby consolidated be retained for the purpose of settling the accounts of the receiver, for making such orders as may be necessary for the preservation and management of the mortgaged premises pending a sale and conveyance thereof, of distributing the proceeds of sale and moneys derived from the operation of the road according to the respective priorities, as ascertained and adjudged by this decree, and for all other orders and decrees herein which may be necessary with relation to the matters already pending and not herein disposed of.

Any party to the causes hereby consolidated may apply to the court upon the foot of this decree for such further orders and decrees as may be necessary.

28 And afterwards, to wit, on the 30th day of November, in the year last aforesaid (A. D. 1880), came the said petitioner, Joseph Penn, assignee of the People's Bank of Belleville, Illinois, by his solicitor, and filed in said clerk's office, in said consolidated cause, his intervening petition with exhibits thereto, which intervening petition and exhibits are in the words and figures following to wit:

29 *Intervening Petition of Jos. Penn, Assignee, &c.*

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In the Circuit Court of the United States in and for said District.
In Equity.

PHILO C. CALHOUN and GEORGE OPDYKE, Trustees, &c.,

vs.

THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated).

FREDRIK WILLEM OEWEL *et al.*

vs.

ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.*

Consolidated causes in equity.

The Intervening Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville.

To the honorable the judges of the said court, sitting in equity:

Your petitioner, by leave, &c., intervening in the said cause, by this his petition respectfully shows unto your honors—

That the said People's Bank of Belleville is a corporation of the State of Illinois, and did a general banking business in the city of Belleville, in said State of Illinois, in pursuance of its charter,

30 from the year A. D. 1869 until the 22nd day of April, A. D. 1878.

That on the 1st day of December, A. D. 1873, the said St. Louis and Southeastern Railway Company (Consolidated) borrowed from said bank the sum of forty thousand dollars, and as an evidence of its said indebtedness gave said bank its promissory note of that date, payable one year thereafter, with interest at the rate of ten per cent. per annum, payable semi-annually, a copy of which note is filed herewith, marked "Exhibit 1," and prayed to be taken as part hereof.

That the total earnings of said company derived from the operation of its railways described in the bills filed in said cause and from all sources for its fiscal year ending July 31st, 1874, during which the said money was borrowed, amounted to the sum of one million two hundred and forty-five thousand six hundred and sixty-five dollars and ninety-one cents ($1,245,665.91), while the expenses of

operating the said railways for the same period amounted to the sum of nine hundred and sixty thousand four hundred and fourteen dollars and five cents, leaving, as the net earnings of said company for said period, the sum of two hundred and eighty-five thou-
31 sand two hundred and fifty-one dollars and eighty-six cents ($285,251.86).

That during said fiscal year the said company expended in necessary equipment for and permanent and lasting improvements of said railways and for the substantial and enduring betterment of said property the sum of three hundred and ninety-five thousand one hundred and twenty-one dollars and twelve cents ($395,121.12), which expenditures were necessary in order that said property should be completed and perfected and brought into condition to do the business which might be offered it to do.

That the operating expenses aforesaid and the said expenditures for necessary equipment and needed and lasting improvements and betterments above mentioned incurred and made during the said fiscal year exceeded the total income of said company derived from said property in the large sum of one hundred and nine thousand eight hundred and sixty-nine dollars and twenty-six cents ($109,869.26).

That the interest coupons upon the first-mortgage bonds of said company, which are particularly described in the said bill filed by said Fredrik Willem Oewel *et al.*, to which reference is made,
32 maturing during said fiscal year, amounted to one hundred and fifty-seven thousand five hundred dollars in gold, which it was necessary that said company should pay as they matured, not only in order that it might maintain its credit and be enabled to dispose advantageously of its "consolidated" mortgage bonds particularly described in the said bill of Philo C. Calhoun and George Opdyke, to which reference is made, but in order that a foreclosure of said first mortgage and the consequent sequestration of all of said property, which would at that time have been disastrous to the interests of said company, might be averted.

That, in order to meet said coupons and prevent such foreclosure, the said company, being at the time insolvent, borrowed the said money from said bank and, as your petitioner is informed, various other large sums of money from various banks, and was thereby enabled to pay all or a part of the coupons then due or about to become due on the said first-mortgage bonds, and to make the said necessary and permanent improvements of the said property, all of which has redounded to the benefit of the holders of the said first-mortgage bonds.

33 And your petitioner further shows unto your honors that, default having been made by the said company in the payment of the said note according to its tenor and effect, the said bank brought an action against the said company in the circuit court within and for the county of St. Clair, in said State, to recover the amount due upon the same, and at the January term, A. D. 1876, of said court, to wit, on the 18th day of January, A. D. 1876, recovered a judgment against said company in said action for forty-six thou-

sand five hundred and twenty-two dollars and twenty cents, ($46,522.20.)

That the said bank caused executions to issue upon said judgment to the sheriff of said county of St. Clair on the 1st day of February, A. D. 1876, on the 14th day of April, A. D. 1876, on the 9th day of June, A. D. 1876, on the 8th day of September, A. D. 1876, and on the 2nd day of January, A. D. 1877, and on said last date to the sheriffs of White county, Saline county, Hamilton county, Jefferson county, and Washington county, in said State, the above-named being all the counties in said State through which or into which the said railway of said consolidated company runs.

34 That at the time said executions were issued all the property of said company was in the hands of the receiver appointed by court in this cause, and the said sheriffs were unable to find any property upon which they could levy to make said judgment, and the same remains wholly unpaid.

That the mortgage upon what is know- as the O'Fallon branch of said railway, made "Exhibit C" to the said bill of the said Fredrik Willem Oewell *et al.*, and the mortgage upon what is known as the Evansville Division of said railway, made "Exhibit B" to said bill, were never acknowledged or docketed as chattel mortgages, as required by the laws of said State, and were never at any time any lien upon any rolling-stock or personal property of said consolidated company.

That said first mortgage described in said bill was never any lien upon any of the personalty or rolling-stock of said consolidated railway company except such as properly appertained and belonged to that portion of said company's railway described in said first mortgage.

That the total length of the main track of said company in the State of Illinois is 208 miles, of which 42 miles are in what is known as the Evansville Division aforesaid, and six miles are in the

35 said O'Fallon branch, making a total of 48 miles not included in or incumbered by the said first mortgage, and 160 miles included in and incumbered thereby.

That what is know- as the Nashville Division of said company's railway, being all that part of said railway in the States of Kentucky and Tennessee, is, as your petitioner is informed, 146 miles in length; and the rolling-stock and personal property thereto appertaining and belonging has always been kept separate and apart as belonging and appertaining to said division only, and not as appertaining or belonging to any other portion of said railway.

That the rolling stock appertaining and belonging to said O'Fallon branch and to the said Evansville Division has been in nowise kept separate and apart from that appertaining and belonging to the balance of said railway in said State of Illinois, and there are no means by which the same can be identified and segregated from said last-named rolling stock.

And your petitioner further shows unto your honors that the decree of this court appointing a receiver of said property, who is not yet discharged, made it impossible for said bank or your petitioner

to pursue the means and remedies afforded him by law for the
36 collection of said judgment by subjecting some of said rolling-stock to sale to satisfy the same, and that the means which he or said bank might have legally resorted to were by said decree suspended or abrogated, and his only means of collecting said debt is through the orders of this court in this cause.

And your petitioner claims that in equity so much of the rolling-stock of said company as bears the proportion to all the rolling-stock thereof which does not belong and appertain to the said Nashville Division that 48, the number of miles of main track contained in said O'Fallon branch and the Illionis portion of said Evansville Division bears to 235, the number of miles of said company's railway, exclusive of said Nashville division, ought to be now declared by this court to stand as a security for said debt, and the money for which the same sold at the sale of said property, made under a recent decree of this court in said cause, on the 16th day of November, A. D. 1880, or so much thereof as may be necessary for that purpose, ought to be applied to the payment thereof.

And your petitioner further shows unto your honors, that on the 22nd day of April A. D. 1878, the said bank, by its deed of that
37 date, which will be produced on the hearing hereof, made an assignment for the benefit of its creditors of all its property and choses in action to petitioner.

In consideration of the premises and of the facts hereinbefore set forth your petitioner prays that upon a hearing hereof your honors will order and decree that so much of the moneys derived from the sale of said property as may be necessary to pay your petitioner the amount due on said judgment may be paid over to him, and that such other and further orders and decrees may be made as will do justice to all persons having a right to receive said moneys as distributees.

JOSEPH PENN,
Petitioner.

CHARLES W. THOMAS,
Petitioner's Solicitor.

STATE OF ILLINOIS, }
St. Clair County, } *ss:*

Joseph Penn, being first duly sworn, says upon his oath that the allegations of fact contained in the above petition are true as he verily believes.

JOSEPH PENN.

Subscribed and sworn to before me this 29th day of November, A. D. 1880, as witness my hand and official seal.

[L. S.] CHAS. BECKER,
Clerk of the Circuit Court of said County,
By GEO. H. STOLBERG, *Deputy.*

(Endorsed:) Filed November 30th, A. D. 1880. J. A. Jones, clerk.

38 "EXHIBIT 1."

Exhibit 1 *to Petition of Penn.*

St. Louis and Southeastern Railway Company (Consolidated).

ST. LOUIS, MO., *December* 1*st*, 1873.

One year after date we promise to pay to the order of The People's Bank, Belleville, Illinois, forty thousand $\frac{0\,0}{1\,0\,0}$ dollars, value received, at said People's Bank, with ten per cent. interest per annum from date, payable semi-annually.

THE ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (CONSOLIDATED),
By J. F. ALEXANDER, *Treasurer.*

(Endorsed:) Filed November 30th, A. D. 1880. J. A. Jones, clerk

"EXHIBIT 2."

"*Exhibit* 2" *to Petition of Penn.*

STATE OF ILLINOIS, } *ss:*
St. Clair County, }

At a regular term of the circuit court within and for the county of St. Clair and State of Illinois, begun and held at the court-house in the city of Belleville, in said county of St. Clair, on Monday, the third day of January, A. D. 1876, it being the first Monday of January, A. D. 1876, according to the act of the General Assembly,
39 by the Hon. William H. Snyder, judge of the twenty-second judicial circuit of the State of Illinois, of which the said county of St. Clair forms a part, the following proceedings were had, to wit:

Present: Honorable William H. Snyder, judge; Herman G. Weber, sheriff; Charles P. Kinspel, State's attorney; Charles Becker, clerk.

THE PEOPLE'S BANK OF BELLEVILLE
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated). } Assumpsit.

And now, on the first Thursday of the term, comes the plaintiff, by C. W. and E. L. Thomas and Noetling and Halbert, its attorneys, and on their motion the court grants leave to the sheriff to amend his return of service endorsed on the summons in this case by striking out the words "and also an agent," which is done. And now, on the second Saturday of the term, comes again the plaintiff, by its said attorneys, and, no one appearing for the defendant, the demurrer to the defendant's plea in abatement is sustained by the court; and
40 the court, on motion of plaintiff's said attorneys, grants a rule on defendant to plead over to plaintiff's declaration by next Monday morning at *at* nine o'clock. And now, on the third Tuesday, comes again the plaintiff by its said attorneys and the said

defendant having failed to plead or demur to the declaration herein in compliance with the rule of court, its default is entered and the court orders that the clerk assess the damages sustained by plaintiff by reason of the non-performance of the promises in the declaration complained of; thereupon the clerk assesses the damages by computing the interest on the promissory note sued upon and reports the amount due on principal and interest to be $46,522.20, which report is approved by the court. It is therefore considered and adjudged by the court that the plaintiff recover of and from the said defendant the said sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, its damages aforesaid, and also its costs by it in this behalf expended, and that it have execution therefor.

And now, on the 5th Tuesday of the term, the plaintiff, by its attorneys, presents an affidavit for an execution instanter, and the court having considered the same orders that an execution issue.

41 STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of St. Clair county, Greeting:

We command you that of the goods and chattels, lands and tenements, and real estate of St. Louis and Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of seven dollars and five cents, being the amount of costs by the said plaintiff about its suit in that behalf expended, and also your legal commission for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this
42 date with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed at office this first day of February, A. D. 1876.

[L. S.] CHARLES BECKER, *Clerk,*
Per GEO. W. SCHUESSLER, *Deputy.*

(*Sheriff's Return.*)

Come to hand February 1st, 1876.

H. G. WEBER, *Sheriff,*
By BENJ. BONEAU, *D'p'y.*

Returned no property found.

H. G. WEBER, *Sh'ff.*

(Endorsed:) Filed April 12, 1876. Chas. Becker, clerk.

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of St. Clair county, Greeting:

We command you, as heretofore, that [of] the goods and chattels, lands, tenements, and real estate of St. Louis and Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two
43 dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county, at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court; and the further sum of seven dollars and seventy-five cents, being the amount of costs by the said plaintiff about its suit in that behalf expended, and also your legal commission for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed at office this 14th day of April, A. D. one thousand eight hundred and seventy-six.

[L. S.] CHARLES BECKER, *Clerk,*
By GEO. W. SCHUESSLER, *D'p'ty.*

Sheriff's Return.

Come to hand April 14th, '76, at 9 o'clock a. m.

H. G. WEBER, *Sheriff,*
By A. G. FLEISCHBEIN, *D'p'ty.*

March 6, 1876. Credit, $160.00.

Returned by order of plaintiff's attorney, June 9th, 1876.

H. G. WEBER, *Sheriff,*
44 By A. G. FLEISCHBEIN, *D'p'ty.*

Filed June 8, 1876.

CHAS. BECKER, *Clerk.*

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of St. Clair county, Greeting:

We command you, as heretofore, that of the goods and chattels, lands, tenements, and real estate of St. Louis and Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which which The People's Bank of Belleville recovered in the circuit court of said county, at the January term thereof, A. D. 1876, in a certain

action of assumpsit then pending in said court, and the further sum of eight dollars and fifty-five cents, being the amount of cost by the said plaintiff about its suit in that behalf expended, and also your legal commission for executing this writ, which you will re-
45 turn to the clerk's office of said circuit court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed at office this 9th day of June, A. D. one thousand eight hundred and seventy-six.

[L. S.] CHARLES BECKER, *Clerk.*
By GEO. W. SCHUESSLER, *Deputy.*

(*Sheriff's Return.*)

Come to hand June 9th, '76, at 9.30 a. m.

H. G. WEBER, *Sheriff.*

March 6, 1876. Cr., $160.00.
Returned to be reissued by order of pl'ff's att'y.

H. G. WEBER, *Sheriff.*

Filed Sep. 8, 1876.

CHAS. BECKER, *Clerk.*

STATE OF ILLINOIS, }
County of St. Clair, } *sct:*

The people of the State of Illinois to the sheriff of St. Clair county, Greeting:

We command you, as heretofore, that of the goods and chattels, lands, tenements, and real estate of St. Louis and Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dol-
46 lars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county, at the January term thereof, D. A. 1876, in a certain action of assumpsit then pending in said court, and the further sum of nine dollars and twenty-five cents, being the amount of costs by the said plaintiff about its suit in that behalf expended, and also your legal commission for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same.

Witness Chas. Becker, clerk of the circuit court, and the seal thereof hereunto affixed at office this 8th day of September, A. D. one thousand eight hundred and seventy-six.

[SEAL.] CHAS. BECKER, *Clerk,*
By GEO. H. STOTBERG, *D'p'y.*

(*Sheriff's Return.*)

Come to hand Sept. 7th, 1876, at 5.30 o'clock p. m.

H. G. WEBER, *Sheriff.*

March 6, 1876. Cr., $160.00.

Returned by order of plaintiff's att'ys Oct. 20, '76.

47 H. G. WEBER, *Sheriff.*

Filed Oct. 20, 1876.

CHAS. BECKER, *Clerk.*

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of St. Clair county, Greeting:

We command you, as heretofore, that of the goods and chattels, lands, tenements, and real estate of St. Louis and Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county, at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of nine dollars and ninety-five cents, being the amount of costs by the said plaintiff about its suit in that behalf expended, and also your legal commission for executing this writ, which you will
48 return to the clerk's office of said circuit court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed, at office, this 2nd day of January, A. D. 1877.

[SEAL.] CHAS. BECKER, *Clerk,*
Per GEO. H. STOLBERG, *Deputy.*

(*Sheriff's Return.*)

Came to hand January 2nd, 1877, at 5 o'clock p. m.
March 6, '76, credit $160.00.

HERM. G. WEBER, *Sheriff.*

Returned unsatisfied by order of pl'ffs' att'ys, and to be reissued March 31st, 1877.

H. G. WEBER, *Sheriff,*
By A. G. FLEISCHBEIN, *D'p'ty.*

Filed March 31, 1877.

CHAS. BECKER, *Clerk.*

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of White county, Greeting:

We command you that of the goods and chattels, lands, tenements, and real estate of St. Louis and Southeastern Railway
49 Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of seventy cents, being the amount of costs by the said plaintiff about this writ in that behalf expended, and also your legal commission for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed, at office, this 2nd day of January, A. D. 1877.

[SEAL.] CHAS. BECKER, *Clerk,*
Per GEO. H. STOLBERG, *Deputy.*

(*Sheriff's Return.*)

Received this execution this 4th day of January, A. D. 1877, at 4 o'clock p. m.

THOMAS J. PORTER,
Sheriff of White County.

50 I return this execution—no property found—March 27th, 1877.

THOMAS J. PORTER,
Sheriff White County, Illinois.

Filed Mar. 29, 1877.

CHAS. BECKER, *Clerk.*

Credit March 6, '76, $160.00.

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of Saline county, Greeting:

We command you that of the goods and chattels, lands, tenements, and real estate of St. Louis and Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which The People's Bank

of Belleville recovered in the circuit court of said county, at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of seventy
51 cents, being the amount of costs by the said plaintiff about this writ in that behalf expended, and also your legal commissions for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court and the seal thereof hereunto affixed, at office, this 2nd day of January, A. D. 1887.

[SEAL.] CHAS. BECKER, *Clerk*,
Per GEO. H. STOLBERG, *Deputy*.

(*Sheriff's Return.*)

Received this execution this 4th day of January, A. D. 1877, at 8 o'clock and 25 minutes p. m.

GEORGE E. BURNETT,
Sheriff of Saline County.

APRIL 2ND, 1877.

STATE OF ILLINOIS, } ss:
Saline County, }

I return this execution not satisfied, having found no property subject to levy by virtue thereof in my county.

GEORGE E. BURNETT,
Sheriff Saline Co., Illinois.

Filed April 2, 1877.

CHAS. BECKER, *Clerk.*

52 STATE OF ILLINOIS, } sct:
County of St. Clair, }

The people of the State of Illinois to the sheriff of Hamilton county, Greeting:

We command you that of the goods and chattels, lands, tenements, and real estate of St. Louis & Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of seventy cents, being the amount of costs by the said plaintiff about its writ in that behalf expended, and also your legal commissions for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date with an endorsement thereon as to the manner in which you may have executed the same.

53 Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed, at office, this 2d day of January, A. D. 1877.

[SEAL.] CHAS. BECKER, *Clerk*,
Per GEO. H. STOLBERG, *Deputy*.

(*Sheriff's Return.*)

Received this execution, No. 5061, at 9 o'clock a. m., January 5th, A. D. 1877.

March 6, '76, credit $160.00.

J. M. BLADES, *Sheriff*.
H. C.

McLEANSBORO', ILLS., *April 2nd*, 1877.

I return this execution not satisfied, no property found to satisfy judgment, interest, and cost.

JAMES M. BLADES,
Sheriff Hamilton Co., Ills.

Filed Apr. 5, 1877.

CHAS. BECKER, *Clerk*.

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of Jefferson county, Greeting:

We command you that of the goods and chattels, lands, tenements, and real estate of St. Louis and Southeastern Railway
54 Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of seventy cents, being the costs by the said plaintiff about its writ in that behalf expended, and also your legal commissions for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date, with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed, at office, this 2nd day of January, A. D. 1877.

[SEAL.] CHAS. BECKE-, *Clerk*,
Per GEO. H. STOLBERG, *Deputy*.

(*Sheriff's Return.*)

The within execution came to hand Jan'y 10th, 1877, at 11 o'clock a. m.

G. W. YOST,
Sheriff Jefferson Co.

55 March 6, '76, credit $160.00.

I hereby return this execution not satisfied, the St. L. & S. E. R'way Co. being in the hands of a receiver this M'ch 31st, 1877.

G. W. YOST,
Sheriff Jefferson Co., Ills.

Filed April 9, 1877.

CHAS. BECKER, *Clerk.*

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of Washington county, Greeting:

We command you that of the goods and chattels, lands, tenements, and real estate of the St. Louis and Southeastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and twenty cents, with interest thereon from the 18th day of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank, of Belleville recovered in the circuit court of said county at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of seventy cents, being the amount of costs by the said
56 plaintiff about its writ in that behalf expended, and also your legal commission for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed, at office, this 2nd day of January, A. D. 1877.

[SEAL.] CHAS. BECKER, *Clerk,*
Per GEO. H. STOLBERG, *Deputy.*

(*Sheriff's Return.*)

Received this execution this 4th day of January, 1877, at the hour of three (3) o'clock p. m.

J. MAY, *Sheriff.*

March 6, 1876, cred. $160.00.

Returned not satisfied. The instruction I received with the execution to hold on till further order. I wrote to pl'ff'-attorney, and, not receiving any answer, I hereby return this execution Dec. 2, 1878.

J. MAY, *Sheriff.*

Filed Dec. 6, 1878.

CHARLES BECKER, *Clerk.*

STATE OF ILLINOIS, } *sct:*
County of St. Clair, }

The people of the State of Illinois to the sheriff of St. Clair county, Greeting:

57 We command you, as heretofore, that of the goods and chattels, lands, tenements, and real estate of St. Louis and South-

eastern Railway Company (Consolidated) in your county you cause to be made the sum of forty-six thousand five hundred and twenty-two dollars and 20 cents, with interest thereon from the 18th of January, A. D. 1876, until paid, it being the amount of a judgment which the People's Bank of Belleville recovered in the circuit court of said county at the January term thereof, A. D. 1876, in a certain action of assumpsit then pending in said court, and the further sum of fifteen dollars and 13 cents, being the amount of costs by the said plaintiff about its suit in that behalf expended, and also your legal commissions for executing this writ, which you will return to the clerk's office of said circuit court within ninety days from this date with an endorsement thereon as to the manner in which you may have executed the same.

Witness Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed, at office, this 28th day of June, A. D. 1877.

[SEAL.] CHAS. BECKER, *Clerk*,
Per GEO. H. STOLBERG, *Deputy*.

(*Sheriff's Return.*)

Came to hand June 28th, 1877, at 3 o'clock p. m.

H. G. WEBER, *Sheriff*.
By A. G. FLEISCHBEIN, *D'p'y*.

58 Mar. 6, '76, credit $160.00.
Ret. no property found, Sept. 14, 1877.

H. G. WEBER, *Sheriff*,
By BEN. BONEAN, *D'p'y*.

Filed Sept. 14, 1877.

CHARLES BECKER, *Clerk*.

STATE OF ILLINOIS, } ss:
St. Clair County, }

I, Charles Becker, clerk of the circuit court of St. Clair county, in the State aforesaid, do hereby certify the above and foregoing to be a true and correct copy of order of court, at January term, 1876, as the same appears of record in law record C, page 185, and executions issued upon the judgment aforesaid, together with all the endorsements made upon the said executions as the same are now on file in my office in a certain cause lately pending in said court on the law side thereof, wherein People's Bank of Belleville is plaintiff and St. Louis & Southeastern R. W. Co. (Consolidated) is defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Belleville, this 29th day of December, A. D. 1879.

[SEAL.] CHARLES BECKER, *Clerk*,
By GEO. W. SCHUESSLER, *D'p'ty*.

(Endorsed:) Filed November 30th, A. D. 1880. J. A. Jones, clerk.

59 And thereupon, to wit, on the day last aforesaid (being Tuesday), the following proceedings were had in said court in the matter of said intervening petition and entered of record, to wit:

Rule on Receiver to Answer Interv'g Petition of Penn.

PHILO C. CALHOUN *et al.*
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated). } In Chancery.

Consolidated.

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

This day comes Joseph Penn, by C. W. Thomas, Esq., his solicitor, and files his petition herein, which the receiver of said railway company is ruled to answer in twenty days.

And afterwards, to wit, on Thursday, the 23d day of December, at the June term of said court and in the year last aforesaid (1880), the following further proceedings were had in said court in said consolidated cause and entered of record, to wit:

60 *Order Allowing Evidence Taken in one Petition to be Used in Other Petitions.*

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO C. CALHOUN *et al.*
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

On this 23d day of December, A. D. 1880, comes Charles W. Thomas, solicitor for certain intervening petitioners herein, and also comes Bluford Wilson, solicitor for the receiver, and it is ordered by the court that any evidence heretofore taken in the matter of any intervening petition filed herein may be read on the hearing of any other intervening petition herein so far as applicable, this order, however, not to prejudice the right of any of the parties to take any evidence which may be desired.

And afterwards, to wit, on Friday, the 22d day of April, at the January term of said court, in the year of our Lord 1881, the
61 following further proceedings were had in the matter of said intervening petition in said court and entered of record, to wit:

Order Appointing Don Turner Comm'r to Take Testimony.

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY, (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO C. CALHOUN, Trustee, &c.,
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

In the Matter of the Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville.

And now, on this 22d day of April, 1881, on motion of the petitioner, it is ordered by the court that this cause be referred to Don Turner to take and report any testimony that may be offered by either party on resonable notice.

62 And afterwards, to wit, on Monday the 29th day of August, at the June term of said court, in the year last aforesaid (1881), the following further procedings were had in said court in the matter of said intervening petition and entered of record, to wit:

Order Appointing C. Wendt Com'r to Take Testimony.

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO C. CALHOUN, Survivor, Trustee,
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

In the Matter of the Intervening Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville.

And now, on this 29th day of August, 1881, comes again the complainant, Philo C. Calhoun, survivor, trustee, by Bluford Wilson, his solicitor, and, on motion of said solicitor, it is ordered that Carsten Wendt, of New York, be, and he is hereby, appointed special examiner herein, under the 67th rule as amended, to take the depositions of Charles Opdyke, Erastus Young, William S. Opdyke, and F. W. Pickerel and others, witnesses on the part of the complainant in this cause.

63 And afterwards, to wit, on the 14th day of October, in the year last aforesaid (1881), came the said intervening petitioner, by his solicitor, and filed in said court his amended and supplemental intervening petition in said cause, which is in the words and figures following, to wit:

Amended Petition of Penn, Assignee, &c.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the Circuit Court of the United States. In Equity.

PHILO C. CALHOUN and GEORGE OPDYKE, Trustees,
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated).

FREDRIK WILLEM OEWEL *et al.*
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.*

The amended and supplemental intervening petition of Joseph Penn, assignee of the People's Bank of Belleville.

64 To the honorable the judges of said court, sitting in equity:

Your petitioner, by leave, &c., respectfully shows unto your honors—

1. That the said People's Bank of Belleville is a corporation of the State of Illinois with general banking powers, and did a general banking business in the city of Belleville, in said State, in pursuance of its charter, from July, 1869, until the 22d day of April, A. D. 1878, when it assigned to your petitioner, for the benefit of its creditors, all its property and assets of every kind and nature soever, as will more fully appear from the deed of assignment made by said bank to your petitioner and ready to be produced upon the hearing hereof.

2. That on the 1st day of December, A. D. 1873, the said St. Louis and Southeastern Railway Company (Consolidated) borrowed from the said bank the sum of $40,000, and as an evidence of its indebtedness gave to said bank its promissory note for that sum bearing that date and payable one year thereafter, with interest at the rate of ten per cent. per annum, payable semi-annually.

3. That said loan was made with the knowledge and consent of the said Philo C. Calhoun and George Opdyke, trustees in all the mortgages and deeds of trust mentioned in the bill in this
65 consolidated cause, for the purpose of paying off and satisfying coupons upon bonds secured by the first mortgage upon said railroad of the said company, bearing date October 1st, 1869, and was applied to that purpose, the earnings of said company being at that time insufficient to pay its expenses and pay said coupons.

4. That at the time said loan was made said company was wholly insolvent, which fact was then unknown to said bank, but well known to said trustees, and your petitioner claims that under the circumstances the holders of the bonds secured by said first mortgage are not entitled to retain the money so borrowed from said bank and paid over to them, but that the same should be restored to your petitioner from the fund arising from the sale of property made under the decree of this court in said cause.

5. And your petitioner further shows that the total earnings of said company derived from the operation of its railways, described in the bill filed in said cause, and from all sources for the fiscal year ending July 31st, 1874, during which said sum was borrowed, amounted to $1,245,665.91, while the expenses of operating the said railways for the same period amounted to the sum of
66 $960,414.05, leaving, as the net earnings of said company for said period, the sum of $285,251.86.

6. That during said fiscal year the said company expended in necessary equipment for and permanent and lasting improvements of said railways, and for the substantial and enduring betterment of said property, the sum of $395,121.12, which expenditures were necessary in order that said property should be completed and perfected and brought into condition to do the business which might be offered said company to do.

7. That the operating expenses aforesaid and the said expenditures for necessary equipment and needed and lasting improvements and betterments above mentioned incurred and made during said fiscal year exceeded the total income of said company derived from said property in the sum of at least $109,869.26.

8. That interest coupons upon the first-mortgage bonds of said company, which are particularly described in the said bill of the said Fredrik Willem Oewel *et al.*, to which reference is made, maturing during said fiscal year, amounted to $157,500 in gold,
67 which it was necessary for said company to pay as they matured, not only in order that it might maintain its credit and be enabled to dispose advantageously of its consolidated mortgage bonds particularly described in the bill of said Calhoun and Opdyke filed herein, to which reference is made, but that in order that a foreclosure of said first mortgage and the consequent sequestration of all of said property, which would at that time have been disastrous to the interests of said company, might be averted.

9. And your petitioner further shows unto your honors that, default having been made by the said company in the payment of the said note according to its tenor and effect, the said bank brought an action against the said company in the circuit court within and for the county of St. Clair, in said State, to recover the amount due upon the same, and at the January term, A. D. 1876, of said court, to wit, on the 18th day of January, A. D. 1876, recovered a judgment against said company in said action for $46,522.20.

10. That said bank caused executions to issue upon said judgment, and to be delivered to the sheriff of said county of St. Clair on the 1st day of February, A. D. 1876; on 14th day of April, A. D.
68 1876; on the 9th day of June, A. D. 1876; on the 8th day of September, A. D. 1876, and on the 2d day of January, A. D. 1877, and also on said last day caused executions to be issued on said judgment and placed in the hands of the several sheriffs of White county, Saline county, Hamilton county, Jefferson county, and Washington county, in said State, the above named being all the counties in said State into or through which the railway of the said consolidated company is built or operated.

11. That at the time said executions were issued all the property of said company, including its rolling-stock, of the value of $1,000,000, was in the hands of the receiver of this court, appointed in said cause, and none of said sheriffs could find any property of said company whereon to levy any of said executions, and the said judgment remains wholly unpaid.

12. And your petitioner further shows that neither of the mortgages mentioned in any of the bills in this case was ever acknowledged as a chattel mortgage, nor was any memorandum of the rolling-stock or other personalty therein described or mentioned ever entered upon the docket of any justice of the peace in said State, nor was the possession of any of said rolling-stock or other personalty ever parted with by said company until the appointment
69 of said receiver was made, when it went under the decree of this court into his custody.

13. That all the personalty of said company, including its rolling-stock, was purchased by it, and came to its possession subsequently to July 2d, 1870, and that all the bonds named in the bills filed herein were negotiated subsequently to that date.

14. That the total length of the main track of the railway of said consolidated company in the State of Illinois is and was 208 miles, of which 160 miles is included in and incumbered by the first mortgage described in said bill of said Fredrik Willem Oewel *et al.*, and 42 miles of which, known as the Evansville Division of said railroad, is included in and incumbered by the consolidated mortgage mentioned in said bill of said Calhoun and Opdyke, and no other, 6 miles of which, called the O'Fallon branch, is included in and incumbered by the mortgage of said branch mentioned in said last-named bill, and no other.

15. That what is known as the Nashville Division of said company's railway, being all that part of said railway in the States of Kentucky and Tennessee, is, as your petitioner is informed,
70 146 miles in length, and the rolling-stock and personal property thereto appertaining and belonging has always by said company been kept separate and apart as belonging and appertaining particularly to said division, and as not appertaining or belonging to any other portion of said railway.

16. That the rolling-stock appertaining and belonging to said O'Fallon branch and said Evansville Division has been in nowise kept separate and apart from that appertaining and belonging to the balance of said railway in said State of Illinois, and there are no means by which the same can be identified and segregated from said last-named rolling-stock.

17. That the rolling-stock and other personal property of said company was recently sold by the master in chancery of this court under the decree of sale made in said cause along with the realty without any separation thereof or any separate bid having been made therefor and that the said rolling-stock and personalty property formed at least one-third of the consideration for which said property sold as a whole.

18. And your petitioner further shows unto your honors that

the interlocutory order of this court in said cause appointing
71 a receiver and his subsequent assumption of his duties as such made it impossible for said bank or your petitioner to persue the means and remedies afforded by law for the collection of said judgments by subjecting some of said rolling-stock to sale to satisfy the same, and that the means and remedies which he or said bank might legally have resorted to were by said interlocutory order suspended and abrogated, and his only means of collecting said indebtedness is from the fund arising from the sale of said property by said master.

In consideration of the premises your petitioner prays your honors to order and decree that so much of said fund as may be necessary to pay said indebtedness may be paid over to your petitioner by the officer having custody of the same, and in case said fund shall have become impared or should appear to be insufficient for said purpose that your honors will order the same to be increased until it is adequate for said purpose, and that such other and further relief will be granted petitioner as the circumstances may require and as to equity and good conscience may appertain.

JOSEPH PENN.

CHARLES W. THOMAS,
Solicitor for Petitioner.

72 STATE OF ILLINOIS, *St. Clair County:*

Joseph Penn, being first duly sworn, says, upon his oath, that, as far as they come within his personal knowledge, the allegations of fact contained in the above petition are true, and as far as they rest in his information and belief he verily believes them to be true.

JOSEPH PENN.

Subscribed and sworn to before me October 3, 1881.
[L. S.] ALBERT G. BADGLEY,
Notary Public.

(Endorsed:) Filed October 14, 1881. J. A. Jones, clerk.

And thereupon, to wit, on the day last aforesaid (being Friday), at the June term of court, the following further proceedings were had in said court in the matter of said intervening petition and entered of record, to wit:

73 *Rule on Complainants to Answer Amended Petition.*

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO CALHOUN, Trustee,
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

And now, on this 14th day of October, A. D. 1881, comes Joseph

Penn, assignee of the People's Bank of Belleville, by Charles W. Thomas, his solicitor, and leave is given him by the court to file in said cause instanter his amended petitition, and the court grants a rule on the complainants in the bills herein to answer said amended petition within thirty days.

And afterwards, to wit, on the 1st day of December, in the year last aforesaid (1881), came the complainants in said consolidated cause and filed their answer to said amended intervening
74 petition, which answer is in the words and figures following, to wit:

Answer to Int'v'g Petition of Penn.

In the Circuit Court of the United States for the Southern District of Illinois, at Springfield.

FREDRIK WILLEM OEWEL *et al.*
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Equity.

and Consolidated.

PHILO C. CALHOUN, Survivor, Trustee,
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Equity.

In the Matter of the Intervening Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville.

Now comes the above-named complainants, by Bluford Wilson, their solicitor, and for answer to the matters and things in the petition of the said Joseph Penn, assignee, &c., set forth, say:

1. That they presume it to be true, as stated in said petition, the said defendant company, the St. Louis & Southeastern Railway Company (Consolidated), borrowed from said bank on the 1st day of December, 1873, the sum of forty thousand dollars, and as an evi-
75 dence of the said indebtedness gave said bank its promissory note of that date; but the complainants say that at the time said note was executed by said company and delivered to said bank it also delivered to said bank $80,000 of the consolidated first-mortgage bonds of said company as collateral security for the payment of said note, and that the said bank accepted the same as such collateral security, and that such acceptance is inconsistent with the facts alleged in said petition as grounds for the payment of said claim out of the fund now in court, and is a good defence in equity against said claim. The said collateral was worth at the time it was delivered to said bank above sixty cents on the dollar, and has realized its holders in the present foreclosure proceedings about 40 cents on the dollar.

2. That the said loan of $40,000 was made upon the faith of the above collateral security and upon the faith of the personal endorsement of the firm of Winslow & Wilson, in the nature of additional security, and that the said bank, by its president, testified in a cer-

tain attachment proceeding heretofore tried in this court that the said loan was made solely upon the credit of Winslow & Wilson.

Reference is made to said testimony, and for greater certainty
76 it is prayed to be taken as part hereof. Complainants submit that the taking of such collateral and personal security was and is inconsistent with the claim of the petitioners as now set forth on their said petition and is in equity a good and sufficient answer to the said claim.

3. That it is not true that the said defendant company borrowed the said $40,000 in order, as stated in said petition, to meet the payment of first-mortgage coupons, and so prevent foreclosure; nor can the said bank show that the whole or any portion of said $40,000 was applied to the payment of such coupons or any coupons, or to the making of improvements of the property; and as to all such matters in said petition alleged the complainants pray strict proof.

4. That all personal property, including all the rolling-stock of said defendant company of every description, whether pertaining to the O'Fallon branch, the Evansville Division, or any other section or division of said company's railway, was fully and legally covered by the mortgages, real and chattel, as set out in the original and amended bills of the complainants filed in the original cause herein,

to which said bills, and the said mortgages as exhibits thereto,
77 and the evidence in support thereof, reference is made for greater certainty, and so much of the same as is pertinent hereto is prayed to be taken as part hereof.

5. That it is true, as stated in said petition, on default having been made by the said company in the payment of said note, that said bank brought an action against said company in the circuit court of St. Clair county, Illinois, to recover the amount due upon the same, and that on the 18th day of January, 1876, said bank recovered a judgment against said company for $46,522.20, and that the same remains unpaid, and that the payment of the amount due on said judgment is the object and prayer of said petition. In answer thereto complainants say that the said bank was duly made a party defendant to the original cause herein, and that upón due service made upon said bank to appear and answer the bill of complaint herein more than ninety days before the first day of the January term, 1880, of this court, afterwards, to wit, on the 31st day of March, 1880, the said bank was three times solemnly called in open court pursuant

to said service, but came not, and made default, and there-
78 upon it was duly ordered, adjudged, and decreed by this court that the bill of complaint herein and the matters and things therein contained be, and the same were, taken as confessed against said bank, all of which will fully appear upon reference to the records in this cause. And the complainants set forth said decree as a full and sufficient answer and defence to the claim of the said bank as set out in its said petition.

6. That the matters and things set out in said petition are otherwise insufficient in equity to warrant any finding against the complainants, and the complainants pray the same benefits on their answer to the said petition as if they had demurred to the same.

And now, having full answer made, — pray to be hence dismissed, with their reasonable costs.

FREDRIK WILLEM OEWEL,
PHILO C. CALHOUN, AND OTHERS,
By BLUFORD WILSON, *Their Solicitor.*

(Endorsed:) Filed December 1, 1881. J. A. Jones, clerk.

79 And afterwards, to wit, on Thursday, the 25th day of May, at the January term of said court, in the year A. D. 1882, the following further proceedings were had in said court in the matter of said intervening petition and entered of record, to wit:

Rule on Petitioner to Complete Testimony.

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO C. CALHOUN, Trustee, &c.
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

In the Matter of the Intervening Petition of JOSEPH PENN, Assignee, &c.

On motion of the defendant it is ordered by the court that the petitioner complete his testimony in twenty days.

And afterwards, to wit, on Monday, the 23d day of July, at the June term of court, in the year A. D. 1883, the following
80 further proceedings were had in said court in the matter of said intervening petition and entered of record, to wit:

Order Setting Petition for Hearing.

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO C. CALHOUN, Trustee,
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

In the Matter of the Intervening Petition of JOSEPH PENN, Assignee, &c.

And now, on this 23d day of July, 1883, come the complainants in the original cause by their solicitors, Wilson & Jones, and upon their motion it is ordered by the court that the matters in controversy under the said intervening petition shall be set down for hearing on Saturday, the fourth day of August, next. It is further ordered that the clerk mail an official copy of this order

81 to the attorney of the petitioner; and afterwards, to wit, on Friday, the 10th day of August, at the term of court, and in the year last aforesaid, the following further proceedings were had in said court in matter of the said intervening petition and entered of record, to wit:

Decree Dismissing Interv'g Petition of Jos. Penn.

FREDRIK WILLEM OEWEL *et al.*
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO C. CALHOUN, Trustee,
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

On the Intervening Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville, Illinois.

And now, on the 10th day of August, 1883, come the parties by, their counsel, and submit this cause to the court on the petition, answer, exhibits, and proofs; and the court having heard and considered the same, and being sufficiently advised in the premises, doth order and decree that said intervening petition be dismissed; and on motion of the petitioner an appeal to the United States Supreme
82 Court is allowed him on his entering into bond to the complainants in the principal cause in the penalty of five hundred dollars, and conditioned as the law directs, within sixty days.

And thereupon, on the day last aforesaid (August 10th, 1883), there was filed in said court, in the matter of said intervening petition, the following certificate of evidence, which was signed by the judge and ordered to be made a part of the record in said cause, to wit:

83 *Certificate of Evidence.*

In the Circuit Court of the United States for the Southern District of Illinois. June Term, A. D. 1883. In Equity.

PHILO C. CALHOUN, Trustee, &c.,
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.*

FREDRIK WILLEM OEWEL *et al.*
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.*

Consolidated cause.

In the Matter of the Intervening Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville, Filed in said Cause.

I, the undersigned, by whom the said matter was heard, do hereby

certify that upon such hearing the said intervening petitioner, to maintain the issue on his part, read in evidence the following deed of assignment:

1. *Assignment of People's Bank to Jos. Penn.*

This indenture, made this twenty-second day of April, A. D. 1878, between the People's Bank of Belleville, a corporation of the State of Illinois, doing business in the city of Belleville, party of
84 the first part, and Joseph Penn, of the same city, party of the second part, witnesseth:

That whereas the said party of the first part is justly indebted to divers persons in divers sums of money, which, by reason of sundry losses and misfortunes, it fears it has become unable fully to pay, and is desirous of providing for the payment thereof by an assignment of all its property and effects: For that purpose, now, therefore, the said party of the first part, in consideration of the premises and of the sum of one dollar to it in in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, transferred, assigned, and set over, and by these presents doth grant, bargain, sell, transfer, assign, and set over, to the party of the second part, and his successors in the trust hereby imposed, all and singular the lands, tenements, hereditaments, and appurtenances, goods, chattels, stocks, promissory notes, debts, bills of exchange, choses in action, claims, demands, property, and effects of every kind and description belonging to the said party of the first part, or in which it has any right, title, or interest whatsover, the same being more fully and more par-
85 ticularly enumerated and described in the inventory attached hereto and made part hereof; to have and to hold the same and every part and parcel thereof, with the appurtenances, unto the said party of the second part and his successors in trust, nevertheless, to and for the uses, intents, and purposes following—that is to say:

First. To take possession of the said property hereby assigned, and to sell and dispose of the same with reasonable diligence, either at public or private sale, and for the best prices that can be obtained therefor, and to convert the same into money, and to collect all such debts and demands as may be collectable and with and out of the proceeds of said sales and collections,

Secondly. After reserving therefrom such commissions and allowances as may be made to him by the county court of the county of Saint Clair, in the State of Illinois, on account of the just and reasonable expenses, costs, charges, and fees of executing this assignment, and of carrying into effect the trusts hereby created, to pay and discharge from time to time, by fair and equal dividends to the creditors of the party of the first part, their claims and de-
86 mands against it, or so much thereof as the said assets of the party of the first part when reduced to money as aforesaid and ratably and fairly divided among all of said creditors will suffice to pay. And should there be a surplus of the proceeds of

the sale of the said property and the collection of the said debts and demands remaining in the hands of the party of the second part after the payment of all the said expenses, costs, fees, and charges of executing this assignment, and of all the claims and demands of all the said creditors, the said party of the second part shall pay over and return said surplus to the party of the first part. And the said party of the second part shall, in all things, administer and execute the trusts hereby created in compliance with the provisions of an act of the General Assembly of the State of Illinois entitled "An act concerning voluntary assignments, and conferring jurisdiction therein upon county courts." Approved May 22, 1877; in force July 1, 1877.

And the said party of the second part does hereby accept the trust created and in him reposed by these presents and doth hereby covenant that he will honestly and faithfully and without delay
87 execute the same according to the best of his skill, knowledge, and ability.

In witness whereof the said People's Bank of Belleville has caused its name to be signed to this deed by its president and its common and corporate seal to be hereunto affixed, and the said Joseph Penn has hereunto set his hand and seal on the day and year first above written.

[Corporate Seal.]

THE PEOPLE'S BANK OF BELLEVILLE,
By SEBASTIAN FEITSAM, *Its President.* [SEAL].

Attest: ENOS D. USNER, *Cashier.*
JOSEPH PENN, *Trustee.* [SEAL].

STATE OF ILLINOIS, }
St. Clair County, } *ss:*

I, Louis C. Starkel, clerk of the county court in and for said county and State, do hereby certify that Sebastian Feitsam, personally known to me to be the president, and Enos D. Usner, personally known to me to be the cashier of the People's Bank of Belleville, and Joseph Penn, who is also personally known to me, appeared before me this day and acknowledged that they executed the foregoing instrument as their free and voluntary act, and the said Sebastian Feitsam and Enos D. Usner acknowledged that they
88 had executed the same as the free and voluntary act of the said bank.

And the said Sebastian Feitsam being by me duly sworn saith upon his oath that he is the president and the said Enos D. Usner is the cashier of the said bank; that the seal attached to the said instrument is the common seal of the said bank, and that it was attached thereto and the said instrument was executed and delivered to the grantee named therein by order of the board of directors of said bank; and I further certify that the said Sebastian Feitsam is known to be a creditable person and witness.

In witness whereof I have hereunto signed my name and affixed

the seal of said court, at my office, in the city of Belleville, in said county, this twenty-second day of April, 1878.

[L. S.] LOUIS C. STARKEL, *Co. Clerk.*

(Indorsements on back.)

STATE OF ILLINOIS, *St. Clair County:*

This instrument was filed for record April 22d, 1878, and recorded in book 148, page 1, *et seq.*

CHARLES BECKER, *Recorder.*

89 STATE OF ILLINOIS, } ss:
Madison County, }

I hereby certify that this instrument was this day, at 10 a. m., filed and duly recored in said county, in book 143, page- 412, 413, and 414.

Given under my hand this 29 day of April, A. D. 1879.

JOHN D. HEISEL,
Cl'k Cir. Court.

No. 440,261.

STATE OF ILLINOIS, } ss:
Cook County }

Recorded Dec. 26, A. D. 1882, at 12 o'clock m., in book 1269 of records, page 531.

JAS. W. BROCKWAY, *Recorder.*

And then petitioner read evidence the following depositions:

2. *Deposition of Fred'k H. Pieper.*

FREDERICK H. PIEPER, being first duly sworn, deposes as follows:

Interrogatory. State your name, age, and place of residence.

Ans. My name is Frederick H. Pieper; am 50 years old, and reside at Belleville, St. Clair county, Ills.

Question. State whether you at any time were an officer of
90 the People's Bank of Belleville; and, if so, what office you filled in said bank, and for what period you filled it.

Ans. I was president of that bank from its organization in 1869 up to about January, 1877.

Quest. State whether, as such president, you were instrumental in effecting a loan to the St. Louis & Southeastern Railway Company (Consolidated) mentioned in the said intervening petition; and if you were, and any representations were made to you by said company or any of its officers during negotiations for said loan respecting the financial condition and prospects of the said company at that time, and respecting the purposes for which the money so to be lent was to be used by said company, you may state fully all those representations, and any other circumstances connected with the affair which may serve to present a true history thereof.

Ans. About August, 1873, J. F. Alexander, treasurer of said company, presented a note for $20,000, made by said company and en-

dorsed by Winslow and Wilson and J. F. Alexander and J. B. Hunter and Wm. S. Smith to the bank for discount. I stated to him that the bank could not accept the paper. I declined to entertain the paper. He stated that the note was good and that he needed
91 the money for the purpose of paying interest on the first-mortgage bonds of that company; that the prompt payment of this interest was very necessary in order to dispose of the consolidated bonds which they were then negotiating. I then left him, and he then came in with Charles W. Thomas and appeared before the discount board, then in session, at which I was present, in which the same representations were made as above stated, and, in addition, said that the securities, Winslow & Wilson, were solvent, owning large amount of real estate, as well as the O'Fallon railroad. He obtained the money; the directors granted the loan. Either at that time or immediately thereafter I had a conversation with Mr. Alexander in reference to the bank's taking acceptances of Geo. W. Opdyke, who was aiding them in raising money to pay interest on these first-mortgage bonds; that they had a fair prospect of disposing [of] the consolidated bonds, but would be unable to do so if they made default in the first-mortgage bonds. We discounted $10,000 of this paper, which was afterwards paid at maturity by Geo. Opdyke & Co. Subsequent to that, and before the panic of 1873, the
92 bank discounted at two different times two $10,000.00 notes of said company, endorsed by Winslow and Wilson and J. F. Alexander. Winslow and Alexander were both present at the discount of these notes, and stated that it was necessary to obtain this money to pay interest on the first-mortgage bonds of said company promptly, in order to dispose of the consolidated bonds, negotiations for sale of which were fast being consummated. In addition to the security above referred to, there were deposited with the bank $20,000 consolidated bonds with each note; that as soon as consolidated bonds could be sold they could pay the note before maturity. These notes, the $20,000 and two $10,000 notes above referred to, were not paid at maturity, but were renewed by one note dated December 1, 1873, a copy of which is Exhibit "A" to petition, said note being for $40,000.00; and with this note were pledged, as collateral security, $80,000.00 of consolidated bonds of said company.

Quest. What was the financial condition of those securities when those notes fell due?

Ans. It was not good. They said they could not pay.

Quest. State whether the representations as to the ownership of O'Fallon railroad were true.
93

(Objected to by Mr. Jones.)

Ans. They were not true according to decision of United States Supreme Court since had.

Quest. State what became of the $80,000 consolidated bonds pledged to secure said $40,000 note, and, if they were sold by the bank after default in payment of the note, state who was present at sale, what notice, if any, was given to company of sale, how much

was realized thereat by the bank, and what value the said bonds had at that time, if any.

Ans. After giving the company and all parties in interest written notice of the sale the bonds were sold in accordance with the notice at the front door of the court-house, in the city of Belleville, St. Clair county, Ills. At this sale C. F. Noetling, J. M. Hamill, and myself were present. J. M. Hamill was then attorney for the company. About $160.00 was realized at the sale. Upon inqury I found the bonds were worthless; they were knocked down to me. I resold them to C. W. Thomas for $200.

Quest. What was the value of those bonds at any time after
94 the note fell due, and what was their value at the time they were pledged in December, 1873?

Ans. They were worthless at the time and after the note fell due. From information I obtained they had a speculative value dependent upon the sale of these bonds averting a foreclosure of first-mortgage bonds at the time when we took them.

Cross-examination:

Quest. Have you now stated all the conversation in reference to these several loans that took place at these several meetings?

Ans. No; I have not. Those conversations were quite lengthy. I have only given substance.

Ques. Were any persons present other than those you have mentioned?

Ans. Am not certain; think not. Perhaps Mr. Badgely, cashier of bank, was present at last loans.

Quest. Are you the same F. H. Pieper who testified in the suit of People's Bank of Belleville *vs.* Edward F. Winslow and James H. Wilson, partners, &c., under firm name of Winslow & Wilson, suit in attachment in U. S. circuit court, southern district of Illinois, April 10, 1877?

95 Ans. I am.

Quest. Are the transactions testified to there by you the same as referred to in your direct examination here?

Ans. Yes.

Quest. In your examination in the suit of People's Bank of Belleville *vs.* Winslow & Wilson, referred to above, in answer to the question by Major Wilson, "State what you know about this $40,000 loan by the People's Bank to the St. Louis & Southeastern Railway Company, when it was first made, as to the renewals, and as to the circumstances attending its making and renewal," did you not answer, "I don't remember the dates. I take it from the book. The first loan was made on or about the 2d day of August, 1873. Mr. Alexander came to me—he was the treasurer of the St. Louis & Southeastern Railway Company—and asked me if we had any surplus money in the bank. I told him we had. He said he desired to borrow $20,000. I told him that I didn't think we could accommodate him. He said he had a piece of paper which was perfectly good, and should like to negotiate it with the bank. I hesi-
96 tated, and told him I did not think there was any use to do

so. I think that was in the forenoon of that day, between the hours of 8 and 9 o'clock; I think about the 2d day of August, 1873. With that I left him; that was on the street; and some time in the forenoon I was in the back part of the bank and he and Mr. Thomas came in together—the discount board was in session—and he presented his paper again. It was guaranteed on the back of it by Messrs. Winslow & Wilson, J. F. Alexander, J. B. Hunter, and Wm. S. Smith, Jr. It was dated the 2d day of August, 1873, payable to E. F. Winslow, president, and made out in the name of company & payable to him?"

Ans. I presume I did.

Quest. Is the Mr. Thomas referred to in your answer C. W. Thomas, of Belleville, Ills.?

Ans. Yes; he is.

Quest. In answer to question, "In other words, it was same character of paper upon which suit has been brought," did you not say, "Yes, sir; payable in four months from the date. The discount board apparently hesitated at first, and Mr. Thomas and Mr.
97 Alexander came to me where I was standing. Mr. Thomas came in, and said he, 'Boys, this paper is perfectly good. Mr. Winslow owns real estate in this county and he owns the O'Fallon railroad, and it is perfectly good.' I hesitated myself. I didn't want to interfere, and withdrew from where Mr. Alexander was standing, and the discount board took the paper. There was no bonds offered or hypothecated at that time?"

Ans. I presume I did.

Quest. On cross-examination by Mr. Thomas to question, "You say that at the time this loan was effected Mr. Alexander & Mr. Thomas came in, and Mr. Thomas stated in the presence of Mr. Alexander that Alexander and Winslow & Wilson were solvent; that they owned the O'Fallon railroad," did you not answer, "Yes, sir, and had other lands;" and to the further question, "Was credit given on that statement?" did you not answer, "Yes, sir?"

Ans. I presume I did.

Quest. What was the date of your acceptance of these bonds as collateral security?

Ans. The first $40.000 was given with the two $10,000 notes prior to Sept., 1873, when these notes were given; then, upon consolidation of entire indebtedness in December, 1873, an additional $40,000 was added.

98 Quest. When was date of sale of these bonds?

Ans. It was after the note fell due; can't recollect the date exactly. My impression is it was in January of 1876.

Quest. Did your knowledge that this money was borrowed to pay interest on first-mortgage bonds come to you since you testified in the suit last mentioned?

Ans. No, sir; it did not.

Quest. Then why did you not so testify in the suit above mentioned?

Ans. If I did not testify that way it is because the question was not asked me.

Quest. Please examine this paper which is marked Exhibit 1 to your testimony and state if you testified as therein set forth on the occasion at the trial of the suit last above mentioned.

Ans. I did.

Redirect examination:

Quest. State whether when you testified as a witness in the suit last named you understood that there was any issue in that case to which the representations made by the officers of the St. Louis & Southeastern Railway Co. concerning the solvencey thereof
99 at the time said loan was negotiated or the purposes to which the money borrowed was to be applied by the company were pertinent.

Ans. I did not.

Quest. Was not the sole issue in that case whether Winslow & Wilson at the time of the levy of the bank's attachment on the Belleville & O'Fallon railroad were the owners thereof?

(Objected to as leading.)

Ans. It was.

Quest. Was your attention at any time during your examination as a witness in that case drawn by any question of counsel on either side to any conversations you may have had with any of the officers of said company while said loan was being negotiated respecting the purposes to which the borrowed money was to be applied?

Ans. I have no recollection except what is in the exhibit here. I think not.

F. H. PIEPER.

Subscribed and sworn to before me this 26th day of June, A. D. 1882.

DON TURNER,
Special Master.

100 3. *Exhibit* 1 *to Testimony of Fred'k H. Pieper.*

Exhibit 1 to Frederick H. Pieper's deposition.

Testimony of F. H. Pieper.

F. H. PIEPER, called for the interpleaders, being duly sworn, testitified as follows:

Q. Are you the Judge Pieper that is referred to in these condemnation proceedings that were read in this cause this morning?

A. I did not hear them read.

Q. Were you county judge of St. Clair county in 1871?

A. Yes, sir; I was.

Q. I will read from part of the testimony that was introduced here: "We, the undersigned, commissioners, appointed by the Honorable Frederick H. Pieper," &c.; that was yourself?

A. Yes, sir.

Q. Do you have any personal recollection aside from the records of the county in regard to that transaction?

A. No, sir.
Q. State when the People's Bank of Belleville was organized.
A. In '68, I think; the summer of '69.
Q. State what your connection with the People's Bank of Belleville was in 1871.
A. I was its president.
101 Q. Have you continued in the exercise of the duties of the position up to the present time?
A. Up to last January, 1877.
Q. You may state whether Charles W. Thomas was connected officially with the bank.
A. From its organization?
Q. Yes, sir.
A. I think he was a director.
Q. Is he a director now?
A. No, sir; I think not.
Q. When did his connection with the bank as director terminate?
A. I couldn't state.
Q. About when?
A. I don't remember whether it was before——
Q. Was it about January, this year?
A. Somewhere about that time; I am not positive as to the exact time.
Q. State whether Mr. Thomas, in addition to being a director in the bank, also acted as it counsel at any time.
A. I think not during the whole time. He might have done it in some special cases. He wasn't the attorney of the bank. He was called sometimes to attend to cases and assist the regular attorney, perhaps.
102 Q. You may state whether he was the attorney in the cause of The People's Bank against The St. Louis and Southeastern Railway Company for forty thousand dollars.
A. I presume he is. Mr. Noetling, the attorney of the bank, said he desired assistance in the matter, and I told him there was no objection to it. He asked if there was any objection to having Mr. Thomas, and [I] told him that I thought it was proper that he should be the other attorney, as he was a director of the bank.
Q. About how often has Mr. Thomas acted as the counsel of the bank?
A. In a number of cases; I wouldn't state the number.
Q. Who was the regular attorney of the bank?
A. Mr. Noetling.
Q. When did Mr. Noetling commence to be attorney?
A. From its organization.
Q. And is yet?
A. Yes, sir.
Q. Was Mr. Noetling interested with Mr. Thomas in the proceeding for the collection and enforcement of the forty-thousand-dollar note?
103 A. It was handed to Mr. Noetling for collection in my presence.

Q. As far as the legal proceedings were concerned, you committed them entirely to Mr. Thomas?

A. The bank committed them to Mr. Noetling, and Mr. Noetling asked if there was any objection to Mr. Thomas being asked to assist.

Q. State what you know about this forty-thousand-dollar loan by the People's Bank to the St. Louis and Southeastern Railway Company, when it was first made and as to the renewals, and as to the circumstances attending its making and renewal.

A. I don't remember the dates; I take it from the book. The first loan was made on or about the second day of August, 1873. Mr. Alexander came to me—he was treasurer of the St. Louis and Southeastern Railway Company—and asked me if we had any surplus money in the bank. I told him we had. He said he desired to borrow twenty thousand dollars. I told him that I didn't think we could accommodate him; he said he had a piece of paper that was perfectly good and he would like to negotiate it with the bank.

104 I hesitated and told him I didn't think there was any use to do so. I think that was in the forenoon of that day, between the hours of eight and nine o'clock; I think about the second day of August, 1873. With that I left him—that was on the street—and some time in the forenoon I was in the back part of the bank and he and Mr. Thomas came in together. The discount board was in session and he presented his paper again. It was guaranteed on the back of it by Messrs. Winslow and Wilson, J. F. Alexander, J. B. Hunter, and William S. Smith, junior. It was dated the second day of August, 1873, payable to E. F. Winslow, president, and made out in the name of the company, and payable to him.

Q. In other words it was the same character of paper upon which suit has been brought.

A. Yes, sir; payable in four months from the date. The discount board apparently hesitated at first, and Mr. Thomas and Mr. Alexander came to me where I was standing. Mr. Thomas came in and said he, "Boys, this paper is perfectly good; Mr. Winslow owns real estate in this county, and he owns the O'Fallon railroad, and it is perfectly good." I hesitated myself; I didn't want to interfere, and

105 withdrew from where Mr. Alexander was standing, and the discount board took the paper; there was no bonds offered or hypothecated at that time.

Q. When were the bonds hypothecated?

A. That was another loan.

Q. State about the renewals.

A. I will explain about the other two loans if you have no objection. On the thirtieth of August Mr. Winslow and Mr. Alexander both came over, and they had paper that was guaranteed on the back of it by Winslow and Wilson and Alexander, and with that they offered to hopothecate bonds, ten thousand dollars. And then again on the first of September they obtained ten thousand more upon the same kind of paper with collateral and bonds. When this paper came due, the first twenty thousand dollars—it came due on December eighth, I think, some four months from its date—Mr.

Winslow and Mr. Alexander both came over and wanted to extend the paper; said they couldn't meet it. Then this question in reference to hypothecating came up, and they hypothecated these consolidated bonds at the rate of fifty per cent. For the twenty thousand dollars they hypothecated forty thousand dollars in bonds.

Q. When was that?

106 A. Some time in December. I can't tell whether it was directly before they became due or whether it was shortly afterwards. That is the paper which is now in court.

Q. You can look at that and state whether that is the collateral or character of the collateral referred to.

A. I merely examined the figures as to the amounts, but I didn't examine it closely. They were put in a package—two or three packages; they were left wrapped up.

Q. You know what they were, don't you?

A. Consolidated bonds.

Q. Where are these bonds now?

A. They were sold.

Q. When were they sold?

A. I couldn't give you the date.

Q. About when?

A. Mr. Noetling sold them. I don't remember the date.

Q. It was subsequent to this petition asking leave of court to sell them, I suppose?

A. I wasn't aware of the petition being filed, and couldn't give you the date.

Q. Was it last January?

A. I couldn't tell you; it was after the note became due. I remember that.

107 Q. Was it in January, '76?

A. Possibly it was in January, '76; it was immediately after the notes became due. I remember seeing the notice being written out to the company.

Q. You may state where those bonds are now, if you know.

A. I couldn't state.

Q. Who was the purchaser?

A. I was the purchaser.

Q. In your own interest or in what capacity?

A. For the bank.

Q. For the People's Bank of Belleville?

A. Yes, sir.

Q. I will ask you if you ever sent those bonds forward to the reorganizing committee of consolidated bondholders?

A. No, sir.

Q. I will ask you if you had knowledge of the fact that the consolidated mortgage of the Southeastern railway securing your bonds has been put in process of foreclosure in this court?

A. No, sir; except what Mr. Hamill told me, I think, yesterday or to-day.

Q. I will ask you if, as a citizen of Belleville, you did not know

that J. F. Alexander was receiver of the St. Louis and South-
108 eastern railway?

A. I have seen some script with his name on it.

Q. I will ask you if it was not an open and notorious fact, well known to all the citizens of Belleville, that the road was in the hands of a receiver under the foreclosure proceeding of the consolidated mortgage?

A. I couldn't state upon what authority. I know he was receiver, but whether it was under the first or the consolidated mortgage I couldn't state.

Q. I will ask you whether you had knowledge of the fact that the O'Fallon branch was in the possession of the St. Louis and Southeastern railway from the time or shortly after the condemnation proceedings referred to herein?

A. I couldn't state that, because I never passed over the road but once and that was at night. I don't think I ever saw a train pass over it, but, of course, from hearing. I have heard persons talk about it, but I never, to my knowledge, saw a train pass over it.

Q. State what you know about the matter, in a general way, as to the possession of the road.

109 A. I couldn't state, under oath, who was in possession, of my own knowledge.

Q. I ask you what the open and notorious fact with reference to the possession of the O'Fallon Branch railroad was?

A. I know nothing further, except they would say that the Belleville and O'Fallon train was in.

Q. Don't you know that the Belleville and O'Fallon road was not operated as such from shortly after the time that you condemned the property or of the condemnation proceedings?

A. I must say I have very little knowledge of what was in those papers, except that the petition was read, and of course I paid attention to what was in it; but as to how far it went or what was in it I couldn't state now.

Q. Did you have notice of the fact that this consolidated mortgage that you took was secured in part by the deed covering the O'Fallon branch property?

A. No, sir; I never looked at the mortgage until after this note became due in the bank; when it came due, or perhaps after that, and then I only read it casually.

110 Q. What was the result of that examination? Did you make any inquiry to ascertain what was covered by your bonds?

A. No, sir.

Q. Or what value they were?

A. No, sir; except I inquired about the value of the bonds, and I found they were not worth anything.

Q. Of whom did you make that inquiry about the value of the bonds?

A. I made it at St. Louis.

Q. Well, did you consult Mr. Thomas upon the question at any time?

A. About the value of the bonds?
Q. Yes; as director of the bank.
A. No, sir.
Q. Did you have any consultation with Mr. Thomas with reference to the sale of the bonds at the time or before you acquired title to them?
A. No, sir; I didn't that I remember of.
Q. How does it come that you were the purchaser of them if they were of no value?
A. Well, there was no bidder there except myself; I was the only bidder.
Q. Why did you bid on them if they were of no value?
A. Well, I don't know why; I bid on them like I would on any other property; took my chances.
111 Q. Where did you leave the bonds after you purchased them; when did you last see them or hear of them?
A. That was some time shortly after I had given them to Mr. Thomas; sold them, or he sold them to somebody; I don't know how that was.
Q. You did sell them to Mr. Thomas?
A. Yes, sir.
Q. When was that sale?
A. Some time after this first purchase.
Q. It may be a matter of some importance to us to know just when the transfer was made from the company to the bank by the sale, and when you transferred them to Mr. Thomas, and what the consideration was.
A. I think it was one hundred and sixty dollars I paid for them, and he said he would give me two hundred dollars, and I took them over to him.
Q. Mr. Thomas took them, however, at two hundred dollars?
A. Two hundred dollars.
Q. Do you know whether he has got them yet or not?
A. I do not.
Q. When was that; was it before this attachment?
112 A. It was a week after the sale; oh, yes; before the attachment; a long time before the attachment.
Q. Both transfers—the transfer to the bank, and by you, as president of the bank, to Mr. Thomas—were made before the attachment?
A. Yes, sir.

Cross-examination:

Q. You say that at the time this loan was effected Mr. Alexander and Mr. Thomas came in, and Mr. Thomas stated, in presence of Mr. Alexander, that Alexander and Winslow and Wilson were solvent; that they owned the O'Fallon railroad?
A. Yes, sir; and had other lands.
Q. Was credit given on that statement?
A. Yes, sir.
Q. What did Alexander say?
A. He said nothing to the contrary.

Q. Did he acquiesce in it or dispute it?

A. He said nothing to the contrary.

Q. Did Mr. Alexander say anything to you about going out to get Mr. Thomas to come in and recommend that loan to the bank?

A. Yes, sir; I met him on the street and told him that I wasn't in favor of making that loan, and he asked me, I think,
113 whether you (Mr. Thomas) was connected with the bank; I was surprised at the time, because I knew you were not attorney of the Southeastern Company; he went and brought you, and you made this expression that I have just stated.

Re-examination:

Q. Do you have any recollection that Mr. Thomas had any further connection with the loan than what you have stated?

A. He might have had, but I don't remember now.

Q. What is your recollection of it, especially of the renewal and taking of these consolidated bonds as collateral?

A. I can't state; I don't remember.

Q. I will ask you whether, at the several times of taking these eighty thousand dollars, you took them without any inquiry as to their value?

A. I never made any inquiry before, because there was no time given to inquire; I made inquiries afterwards.

Q. Of whom did you inquire?

A. I never inquired until after these first notes came due.

Q. Of whom did you inquire?

114 A. I inquired of a banker in St. Louis.

Q. You can't recall that you had any further conversation with Mr. Thomas, except the one referred to, about these bonds?

A. No, sir; I don't think the matter was referred to.

Q. Except at the time of the sale?

A. Yes, sir.

Q. Of course when you sold him the bonds——

A. At the time of the sale, Mr. Thomas said he wanted to buy those bonds; he wasn't present at the sale, and I bought them for the bank; he was absent; I think he was perhaps called off somewhere. I don't think there was anybody present except Mr. Hamill. If my recollection serves me right, I think Mr. Hamill was present at the sale. I think there was only three of us that were present. They were sold in front of the court-house door. Mr. Thomas told me early in the morning that he wished to buy those bonds, and I couldn't find him, and I bought them and afterwards sold them to him.

Q. In what capacity was Mr. Hamill acting at the time of the sale?

A. Attorney for the Southeastern road.

115 4. *Testimony of Ed. F. Winslow, Taken on Petition of Skelley et al.*

EDWARD F. WINSLOW, being first duly sworn, testified as follows:

Q. Your name is Edward F. Winslow?

A. Yes, sir.

Q. You were formerly president of the St. Louis and Southeastern Railway Company; after the consolidating, president of the consolidated company?

A. Yes, sir.

Q. State, General, how you came in possession of these certificates of indebtedness issued by the St. Louis and Southeastern Railway Company, Consolidated.

A. They were paid to me by workmen and other employees of the said company for town lots and other property by me sold to them.

Q. State whether those employees were working in the State of Illinois on the road of the St. Louis and Southeastern railway.

A. They were.

Q. And these certificates were issued to them in payment for work done by the company?

A. I have reason to believe so.

116 Q. State whether you took them at their full face value.

A. I did.

Q. And you are now the owner of them?

A. I am.

Q. State what is due you as salary for the month of October, eighteen seventy-four (1874) as president of the whole line?

A. Seven hundred and fifty dollars ($750.00).

Q. State when Mr. Alexander was appointed receiver.

A. I think it was about the last of October, eighteen seventy-four (1874).

Q. What part of the line was he receiver of?

A. He was receiver of all the railway owned or controlled by the consolidated company except that part of the road in Kentucky.

Q. Who was receiver of that part of the line?

A. St. John Boyle.

Q. How long did Mr. Alexander continue to operate the road as receiver?

A. I think until August, eighteen hundred and seventy-six (1876).

Q. Who succeeded him?

A. General James H. Wilson.

Q. Did he operate the same part of the line that Mr. Alexander had operated?

117 A. He did.

Q. And St. John Boyle continued to operate the Kentucky division?

A. He did. Wilson was appointed the second of September, eighteen seventy-six (1876).

Q. State how long General Wilson continued to operate the road.

A. Until January, eighteen eighty, if I understand it.

Q. He operated the road as receiver, then, until January first, eighteen eighty (1880)?

A. Yes, sir.

Q. The receivers, Alexander and Wilson, were appointed receivers at the request of Calhoun and Opdyke, trustees for the bondholders?

A. They were.

Q. State whether George S. Winslow was paid in scrip during the time the company paid its employees in scrip.

A. He was, and so was everybody else in Illinois and Indiana.

Q. On account of labor and for all supplies and materials furnished?

A. On account of labor and many supplies and materials furnished.

Q. Were certificates of indebtedness issued for any other
118 purpose than to pay for labor, supplies, and materials furnished to the road?

A. I do not think they were.

Q. I ask you to state, General, how it happened that the company began to issue those certificates of indebtedness?

A. The certificates of indebtedness were issued fully in payment of services rendered the company by its officers and employees and because the company had no money with which to pay them, for the reason it had applied the receipts—the income—to payment of interest coupons on the bonds, and for additions and improvements to the property.

Q. State whether it was, in the opinion of the officers of the company, *whether it was* necessary in order to carry on the business of the road to issue the certificates of indebtednes for the payment of labor, supplies, and materials.

A. I believe it was.

Q. Do you remember what time they began to issue these certificates?

119 A. I think it was in October, eighteen seventy-three (1873).

Q. State what your recollection is about the company at that time being behind in paying the amount due its employees for labor, supplies, and materials furnished to the road.

A. I think the company was one or more months in arrears for labor and materials at the time the certificates were first issued.

Q. After they were issued was it the custom to redeem them up to within a short time before the appointment of receivers?

A. Yes; they were paid, as near as it could be done, at the time they matured from the time those certificates of indebtedness were first issued up the first of October, eighteen seventy-four (1874).

Q. State whether the road was entirely operated by reason of those certificates.

A. I think it was to a great extent.

Q. From the time the road was opened for business in Illinois and Indiana up to the time the receiver was appointed, state whether the road always earned enough to pay operating expenses in full.

120 A. I believe it did every month.

Q. By refreshing your recollection with that report what would you state the net earnings of the St. Louis Division were up to the time the receiver was appointed in Illinois and Indiana?

A. About seven hundred thousand dollars ($700,000.00).

Q. What became of that seven hundred thousand dollars net earn-

ings, General? Why was it not applied to pay the current operating expenses of the road up to the time of the appointment of the receivers?

A. That money was applied in part toward paying the operating expenses and in part for interest upon the bonds and also for additional improvements.

Q. The larger portion of that money was applied toward payment of interests, equipments, and permanent improvements on the property?

A. I think it was.

Q. If the earnings of the road had been taken from the time the road was first operated in Illinois and Indiana up to the time
121 the receiver was appointed and applied towards paying the current expenses of the road it would have paid them in full?

A. Oh, yes; certainly.

Q. At the time you were paying the employees in certificates of indebtedness and purchasing supplies and materials for the road with such certificates, were you paying the bondholders interest on their bonds in cash out of the earnings of the road?

A. I do not think we were.

Q. Were they not paid in money at all from the time you commenced to issue certificates of indebtedness?

A. They may have been paid some part, but not a very large part.

Q. What I mean is, you made sufficient, you have stated, to pay operating expenses in full all the time. How were you applying the money you made out of the earnings of the road?

A. It was being applied toward the payment of indebtedness created for payment of interest and for additions and improvements to the property.

Q. Permanent improvements on the road?

A. Yes, sir.

122 Q. State what amount, if any, you paid to the bondholders as interest in the year eighteen — seventy-four (1874), and any part of that year.

A. I could not say that any considerable sum was paid, but think a small amount or some amount was paid.

Q. Then, you state that the earnings of the road in eighteen seventy-four (1874) up to the time of the appointment of a receiver what did not go to pay interest to the bondholders went to pay for permanent improvements made prior to that time?

A. Yes, sir; and a part of it to pay for certificates of indebtedness as they matured.

Q. Did you use any of the money obtained from the earnings of the road in eighteen hundred and seventy-four (1874) to pay off money that you had borrowed prior to that time, which borrowed money had been applied to pay interest to the bondholders?

A. Yes; I think some part of it was so applied.

Q. How much would you estimate that at—I am speaking
123 prior to eighteen seventy-four (1874), before the appointment of a receiver?

A. I cannot state, but I think [a] considerable sum.

Q. Well, as near as you can, give the same. I do not want you to be correct; but give some general opinion of the sum, as near as you can now.

A. I do not think the amount was less than one hundred thousand dollars ($100,000.00).

Q. You say, General, then, that the company took about one hundred thousand dollars ($100,000.00) of the earnings of the road in eighteen hundred and seventy-four (1874) and either paid it as interest to the bondholders or else paid off money that had been borrowed to pay interest to the bondholders previously for additions and permanent improvements to the property?

A. I think it was so applied.

(Objection.)

Q. State whether that money was appropriated with the knowledge and consent of the trustees for the bondholders or either of them.

A. I think it was; never personally supervised that question.

124 Q. State whether you had frequent conferences with the trustees for the bondholders or not about the general management of the property—the application of the funds earned.

A. I had frequent conferences with one of them.

(Objection to the question and answer.)

Q. I wish you would state what those conferences were, or what your correspondence was with either one or the other of the trustees for the bondholders. Give us some idea of it.

A. I frequently met one of the trustees and discussed the financial and other situations of the company.

(Question and answer objected to.)

Q. State whether this trustee knew the application you were making of the funds of the money earned by the road or not.

A. I think that one of them did.

(Objected to.)

Q. When was it that you were in Europe, General, to see the first-mortgage bondholders of the St. Louis and Southeastern railway?

A. In July and August, eighteen hundred and seventy-four (1874), I think.

125 Q. Will you state what your conference was with the bondholders at that time in regard to the property, and what amount of bonds those that you met represented?

A. I had several conversations with the parties who claimed to represent holders of the bonds; I do not know how many bonds they represented.

Q. Will you give the names of those parties, if you please?

A. Oewel, Gumpertz, and Wertheim were among the number.

Q. You say you do not know the amount they represented exactly; did not they represent a large amount of those first-mortgage bonds?

A. They said they did.

Q. State what your conferences with those parties were; what was the nature of them; what consultation did you have about the property?

A. The substance of it was, I represented to them the condition of the company and the necessity for co-operation between the various classes of creditors, and of the concessions on the part of the first-mortgage bondholders and other parties interested, to enable the company, by some means, to settle up its affairs,

126 extend its indebtedness as to time, and arrange for it to prosecute its business upon a more satisfactory basis.

Q. Was there anything said at that conference in regard to the appointment of a receiver for the property?

A. Yes; I think the subject was referred to in general terms.

Q. Was the substance of the order—was there anything said of the terms on which the receiver was appointed?

A. No.

Q. But it was discurred between you and the bondholders?

A. The probability of a receiver being appointed was named.

Q. General, I will ask [you] to state, if you remember, the order of court made when the receiver was appointed—that is, that part of it in relation to the payment of these claims that we are now inquiring about—certificates of indebtedness, supplies, and material and labor for October of eighteen hundred and seventy-four (1874).

A. I do not recollect the exact terms of the order, but think they were provided for in the order.

127 Q. Where was that order agreed upon, or that part of it?

A. I think it was agreed upon in New York.

Q. Were the trustees for the bondholders present when that was discussed?

A. I do not know that they were.

Q. Did they know anything about the substance of the order—that part of it?

A. I suppose they did, but I do not know that.

(ATTORNEY FOR DEFENDANTS: Answer of witness objected to.)

Q. At whose instance was the order drawn up in such a way as to protect the claims on certificates of indebtedness, supplies, and materials and for labor?

A. I do not remember, but think I had something to do with obtaining that provision.

Q. Do you know whether the first receiver, when appointed, knew that order, and if he had lived was going to carry out that part of it in regard to the payment of those claims or not?

A. I think he had attempted to carry out the order in this

128 particular, in some measure, and might have proceeded further in that direction, but I do not know towards the last.

Q. Were you connected with the road, General, in October, eighteen hundred and seventy-four (1874)?

A. I was.

Q. Do you remember a circular that was issued by the receiver in regard to the payment of these claims; I will ask you to examine that circular and state whether you know anything about it, whether you ever saw it before.

A. Yes; That was issued by the receiver at that time.

Q. You say this circular was issued by the receiver at that time?

A. It was.

Q. I will ask you to stated, General, what you always said to any persons having these claims, both before and after the appointment of the receivers, in regard to their payment—these certificates of indebtedness, claims for labor, and for supplies and materials.

A. I said I thought they ought to be paid and believed they would be.

Q. You were still retained for some time after the appoint-
129 ment of Mr. Alexander as receiver?

A. I was.

Q. I will ask you, General, to examine this report and see if you identify it as a report made to you as president of the company.

A. I do.

Report given in evidence, marked "Exhibit A" to General Winslow's deposition.

Q. Do you also recognize this as report made by the auditor of the company to you as president?

A. Yes.

Report given in evidence, marked "Exhibit B" to his testimony.

Q. Do you recognize this as a report made by you to the stockholders and bondholders of the company for the year ending July thirty-first (31st), eighteen seventy-four (1874)?

A. I do.

Report given in evidence, marked "Exhibit C" to his testimony.

Q. Do you recognize this as report of Alexander, receiver in eighteen hundred and seventy-four (1874)?

A. Yes; I suppose he made that report.

130 In evidence as "Exhibit D," the first annual report of the receiver of the St. Louis Division.

The pamphlet offered is the second annual report of the receivers of the St. Louis and Southeastern railway (consolidated) for the fiscal year ending October thirty-first (31st), eighteen hundred and seventy-six (1876), is admitted to have been made by them and is given in evidence.

The third annual report of the receivers of the St. Louis and Southeastern railway (consolidated) for the fiscal year ending October thirty-first (31st), eighteen hundred and seventy-seven (1877), is admitted to be the report of the receivers for that year and given in evidence.

Also the pamphlet marked as the "Fourth annual report of the receivers for the fiscal year ending October thirty-first (31st), eighteen seventy-eight (1878), is admitted to be the report of the receivers for that year and is given in evidence.

Q. I will ask you to state what you estimate the amount expended by the company on its whole line for equipment and permanent improvements between the first day of October, eighteen hun-
131 dred and seventy-two (1872), on the St. Louis Division, and the first day of June, eighteen hundred and seventy-two (1872), on the Nashville Division up to the first day of November, eighteen hundred and seventy-four (1874).

A. I do not remember how much it is, but about eight hundred thousand dollars ($800,000.00)

Q. That money was all expended in making permanent improvements on the property?

A. Yes, and additions.

Q. State whether these were necessary in order to carry on the business of the road in the opinion of the management.

A. They were believed to be.

Q. I have stated in this petition that the rolling-stock on the St. Louis Division was not sufficient to transact the business of the road in the years subsequent to eighteen hundred and seventy-two (1872); state what you know in regard to that after eighteen seventy-two (1872); whether there were large additions made to rolling-stock on the St. Louis Division, and whether it was necessary to make these additions to the equipment.

A. There were payments for such additions—equipments—
132 amounting to something like two hundred thousand dollars ($200,000), all of which were believed to be necessary.

Q. And then the balance of this $435,623.74 on the St. Louis Division in the statement of equipment required and permanent improvements made since the consolidation—the balance of that, over $200,000.00, went toward permanent improvements and additions to the property?

A. I believe it did.

Q. State whether the bondholders will receive the benefit of these permanent improvements, equipments, and additions made to the property.

A. It did increase the value of the property they secured.

Q. It did increase the value of the property?

A. Yes, sir.

Q. I will ask you to state, General, if in the latter part of eighteen hundred and seventy-two (1872) and all through the years eighteen hundred and seventy-three (1873) and seventy-four ('74) the company was not very greatly embarrassed financially in regard to its business.

A. It was.

Q. State whether most of those improvements and the roll-
133 ing-stock that was added to the road were made on money that was borrowed by the company.

A. It was received from loans and sales of securities and earnings.

Q. The company borrowed large sums of money, did it not, during 1873 and '74?

A. It did.

Q. And expended that money in improvements on the property?

A. We paid money for such improvements or to regulate other sums procured for that purpose.

Q. General, by refreshing your memory with that report, can you state what amount of interest was paid on the whole amount on the St. Louis Division to the bondholders from the time the road was first operated until November 1st, 1874—the report made by the auditor to the president of the company in 1875—June, I believe?

A. I think it was about $500,000.

Q. How much on the consolidated bonds—as interest on the consolidated bonds?

A. It is about $100,000.

Q. And how much on the bonds on the Kentucky Division, or in the State of Kentucky?

A. About $135,000.

134 Q. General, can you state out of the earnings of what division was this $102,060 paid on the consolidated bonds as interest?

ATTORNEY FOR THE DEFENDANTS: The question and answer of the witness from memory in the presence of the official report giving the exact figures are objected to as incompetent.

A. So much of the earnings as was applied to the payment of interest on the consolidated bonds was largely taken from the earnings of the St. Louis Division.

Q. There was about what amount of consolidated, or what amount did the consolidated bonds that was put on the market and sold bring, deducting commissions, discounts, &c.?

A. I think something over $1,900,000.

Q. You mean one million nine hundred thousand dollars?

A. Yes.

Q. I will ask you to state, General, about how much did that part of the road south of the Ohio river, known as the Nashville Division, cost the St. Louis and Southeastern Railway Company,

135 its purchase, and what paid for it.

A. It cost about $1,100,000 at that time.

Q. How was that paid?

A. It was paid by sale of the consolidated bonds and money borrowed upon them.

Q. Then it took most of the proceeds of the consolidated bonds to pay for that property?

A. It took about the amount stated above.

Cross-examination by B. WILSON, attorney for the defendants:

Q. In your answers to the queries propounded on the subject of the net earnings of the St. Louis and Southeastern Railway Company (Consolidated) from October, 1872, to November 1st, 1874, you

have answered, General, that net earnings were about $700,000. Do you mean to raise any question by your answer as to the accuracy of the exact figures reported under your authority of the railway for that period?

A. No; I do not.

Q. Can you from the records or authentic data state what the earnings were during the period in question?

136 A. $720,566.71.

Q. Those are the exact figures covering net earnings of the St. Louis Division between the dates referred to?

A. So far as I know.

Q. Did those figures include any portion of the earnings south of the Ohio river?

A. I think not.

Q. Will you refer to the report in question and state what the net earnings of the Nashville Division were during the corresponding period?

A. From the 1st of June, 1872, to the 1st of November, 1874, they amount to $69,093.29, net, Nashville Division.

Q. In your answer to question propounded in behalf of petitioner as to the amount of interest paid during the corresponding period I believe you state in round numbers about the sum of five hundred thousand dollars. Will you please refer now to the report in question at page 12, appendix 11, and state the precise amount of interest paid?

A. $478,428.41.

Q. That is the interest on what?

A. On the St. Louis and Southeastern railway first-mortgage gold bonds.

137 Q. How much was paid on the consolidated bonds?

A. $88,562.94.

Q. How much on the Evansville, Henderson and Nashville railroad bonds?

A. $135,660.00.

Q. Are the figures which you give the net outlay on account of coupon interest payment, or is it subject to further charges; if so, what? And state the amount.

A. I think on gold bonds there was a premium paid during the whole time which amounted, as near as known, to $81,463.12.

Q. The payments in question stated so far as you know cover the entire payment on account of coupon interest?

A. They do.

Q. Can you state precisely the amount of moneys expended for permanent improvements and additions in the way of equipment and otherwise, betterments upon the St. Louis and Southeastern Railway Company, the defendant railway company, from October 1st, 1872, to November 1st, 1874?

A. Page eleven of report shows the amount to be $435,-

138 623.74, which I believe to be correct, for the St. Louis Division.

Q. How much for the Nashville division?

A. Same report shows $423,892.19, which I believe to be correct.

Q. Making the aggregate for such payment on the entire railway what sum?

A. $859,515.91.

Q. Do you know of any other payment or expenditures on account of permanent improvements or betterments other than those mentioned in this report to you by Haines, auditor, and set forth in page 11, appendix 9?

A. During that time?

Q. Yes.

A. I don't.

Q. Please look over the items in reference to the expenditures that were made and state, after examination, whether you think they are all properly and fairly chargeable to the account of the railway.

A. Yes; I think they are.

Q. Legal expenses, $10,372.55?

A. Yes.

Q. And $5,593 on Nashville Division?

A. Yes.

Q. Engineering and salaries?

A. Yes.

139 Q. Evansville hotel subscription?

A. Yes; that is part of the general plan for improvements.

Q. This item for machinery for shops, was it additional machinery?

A. Yes; I think so.

Q. Have you given the exact figures as to the amount realized by the sale of the consolidated bonds of what is known as consolidated or second-mortgage bonds?

A. So far as I know I have.

Q. You have stated that about one million of it was expended in acquiring the road south of the Ohio river, known as the Nashville Division. What became of the eight hundred or nine hundred thousand dollars?

A. The amount was applied toward the payment of interest and for addition and improvements to the property.

Q. Can you state what proportion, if any, of this money was used or applied in payment of coupon interest of this railway?

A. I cannot.

Q. Can you state if any of it was applied for improvements?

A. No.

140 Q. Please look at this report of Mr. Alexander, which has been put in evidence at page 6, where these words occur, "It is perhaps only proper that I should here state that the consolidation in 1872 of your road with those roads in Kentucky and Tennessee, now described as the Kentucky and Tennessee Divisions, brought to your road a large addition to its equipment, paid for by the proceeds of the sale of consolidated bonds, and also brought a large increase of through freight and passenger travel, resulting from harmonious working and co-operation." Do you concur in the

accuracy of the statement of Mr. Alexander that the equipment, the addition to the equipment of the road as here made by him, was paid for out of the sale of consolidated bonds?

A. I think that Mr. Alexander stated the case in a general way. When the Kentucky and Tennessee Divisions were purchased there was considerable equipment on those lines which formed a part of the original purchase, for which the company gave the $1,100,000, or about that sum, hereinbefore mentioned.

141 Q. Will you state now that aggregating the net earnings of the entire railway prior to the appointment of receiver and the proceeds of the sale of the consolidated bonds the sum was inadequate to the payment of all such accounts as appear in your reports for coupon interest and improvements?

A. I do not think the amount was sufficient.

Q. You say that you think the sum thus realized was inadequate to this payment. Let us see how much was paid; how much was received for consolidated bonds net?

A. $1,968,000 was received.

Q. What is the aggregate of the net earnings and the net proceeds of the consolidated bonds?

A. It is $2,757,701.74, as near as I know.

Q. Out of this what payments were made, now, precisely on interest account and on account of bettermants and improvements?

A. $784,114.47, as near as I know; $859,515.91 for additions and improvements; $1,385,715, including $300,000 consolidated bonds paid out at par and shown in the statement of consoli-

142 dated bonds sold for that amount, making an aggregate of $3,029,345.38.

Q. What is the difference between the two aggregates?

A. The difference is $271,643.64.

Q. How did it happen that in answering the question of the petitioner's counsel you omitted the $300,000 in your statement?

A. Simply because it is the custom always to assume the sale of bonds at the discount rate—that is, the net result realized and those sold at par—as the sum actually received.

Q. Do you wish now to state as the result of your examination positively that the moneys realized from the operation of the railroad and from the sale of the consolidated mortgage bonds was inadequate to the payment of the coupon interest account to the extent that it was paid and the permanent improvement account after deducting the amount paid for the Kentucky and Tennessee Divisions?

A. Yes. I think it was wholly inadequate to an extent equal to $271,000 at least.

Q. Do you wish to be understood as stating that the deficit

143 was made up by diversions from the current debt fund of the railway?

A. It was made up from money received while operating the road as earnings and from loans made by the company.

Q. Is it a fact that this gross sum of $1,968,000 represents the en-

tire amount realized from the sale of consolidated bonds directly and indirectly?

A. It is, as I believe.

Q. And includes moneys realized by the direct sale of the bonds as well as by the hypothecating?

A. No; it includes money received from their sale.

Q. About how much money was received by the hypothecation of the consolidated bonds in excess of the $1,900,000 realized in the sale?

A. It is impossible for me to say without a careful examination of the books, but a large sum was realized in this manner from this source during the period from October 1st, 1872, to November 1st, 1874.

Q. I see in the same table of moneys realized by the sale of bonds a certain amount credited to O'Fallon Branch bonds and other
144 large amounts as the proceeds of local aid; what proportion, if any, of these items of local aid or county bonds and O'Fallon Branch bonds was realized by the consolidated railway company?

A. The money realized from the sale of the O'Fallon Branch bonds was applied towards the building of that branch, and the proceeds of local aid bonds and subscriptions of that character were charged as a part of the cost of the St. Louis Division during its construction, or paid out for that purpose.

Q. No portion of it was realized after the 31st day of October, 1872?

A. I do not think any portion of it was realized by the consolidated company and applied on any other account than for construction purposes.

Q. In your testimony do you wish to be understood as testifying generally from recollection, or as basing your testimony on the records and reports of the company while it was under your management?

A. I make my statements based, so far as the figures are given and reference made upon the reports and otherwise, upon recollection.

145 Q. Any conflicts, if any, between your statement of the figures or recollection of the application of the funds and the statements as shown by the books of the company and the reports in question; do you wish to be understood as insisting upon the accuracy of your statements?

A. I think I should rely upon the official reports of the company in preference to my remembrance or recollection of figures.

Q. In your testimony as to the use of the current funds of the road for the payment of coupon interest and permanent improvements, &c., have you pretended to be precise and accurate as to the amounts paid on the several accounts?

A. Only so far as my answers correspond nearly with the official statements made by the officers of the company or by the receivers in cases named.

Q. What was the fact as to the system of book-keeping—on the subject of cash expenditures, for instance; was there any precise or accurate track kept of the various moneys received from time to time in the way of revenue, or from the sale of real estate, or from

146 consolidated bonds, and its specific application as for the payment of coupon interest, permanent improvements, or on account of the current operating expenses?

A. The books of the company, if carefully examined, will, in my opinion, show the derivation of all sums received by the company, and also the application of any amounts paid out from time to time, and for what account paid out.

Q. You do not get my idea altogether. What I wish to ask is, did you use the moneys arising from the sale of the consolidated bonds always for betterments and improvements and in pushing your purchase south of the Ohio river, or did you apply some portion of them to the payment of operating expenses, and *vice versa?*

A. I think the money derived from the sale or hypothecation of consolidated bonds was applied directly to the purchase of the Nashville Division, to the payment for equipment and additional improvements, or to reimburse the company for sums taken from earnings and applied to like payments.

147 Q. Was there any record kept from time to time of the amount of reimbursements to the company on account of diversions from its current fund?

A. I do not think the accounts, unless examined carefully, will show on their face the exact difference between the amount paid from earnings for such items and that received from time to time from the sale or hypothecation of the said bonds.

Q. Were the books of the company, so far as you know, correctly kept?

A. I think they were.

Q. Are the books of the company, in your judgment, fair exponents of the precise expenditures made from time to time on account of the company?

Objection to the above made by attorney for plaintiff.

A. Up to the time I left the road I think they were so kept, and upon careful examination will show in detail the application as well as the source of all funds received.

Q. You know now of none received where the books should not be received with full credit?

A. I do not.

148 Examination by attorney for the plaintiff:

Q. I want you to state, General, how the money was used that you derived from the hypothecation of the consolidated bonds; whether it was used to pay off prior indebtedness or not.

A. I think it was applied to the payment of indebtedness created before the money was received, or to the payment of coupon interest upon one or more classes of the bonds for the company.

Q. The greater proportion of it—was it not applied to the payment of prior indebtedness of the company aside from coupon interest?

A. I think it was.

Q. I will ask you to state, General, from the time the road was built,

were the local subscriptions and aid and everything received along the line of the road in Illinois and Indiana paid for the building of the road?

A. It was paid for and on account of the building of the road.

Q. So that the company in Illinois and Indiana from the time the road was opened was in debt to a certain extent?

149 A. It was in debt to the first-mortgage bondholders, for whom the road was built, or for the financial agents of the company.

Q. I mean the floating indebtedness.

A. A large floating indebtedness it had from the time of the consolidation, and the proceeds derived from the hypothecation of those consolidated bonds went to pay off this indebtedness.

Q. Now, you refer to the reports for figures, or whether the reports state certain amounts correctly; you do not pretend to contradict the reports; are there not facts entirely outside of the reports that you know of your own knowledge to show the payments of certain sums and on what account they were applied?

A. I think there are some such cases.

Q. You can state if that $300,000.00 that you speak of was paid as cash, or is reported as received from consolidated bonds and was paid to the American Contract Company as one of those items?

A. That shows in the report of the auditor.

Q. It is included in the net amount from the proceeds of consolidated bonds?

150 A. Yes.

Q. State, General, adding together the total earnings of the whole road from the time it was first operated in Illinois and Indiana, and from the time you acquired possession of it in Kentucky and Tennessee, and adding together all the sums derived from the sale of consolidated bonds, would that have been sufficient to have paid the amount that was paid out for betterments and permanent improvements on the road and for interest to the bondholders of all classes and the purchase-money in Tennessee and Kentucky?

A. It would not.

Q. By what amount would it fail?

A. By about $271,000.00, as near as I know.

Q. About what amount was diverted from the earnings of the road that should have gone to the laborers to pay them for October and in payment of certificates of indebtedness and supplies and materials; about what amount was taken from Jan'y 1st to

151 November 1st, 1874, and paid to the bondholders and put in permanent improvements on the road?

A. I think about $100,000.00 had been so diverted.

Cross-examination by attorney for the defendants:

Q. Do you speak now from recollection or from any knowledge which you have based upon examination of the books?

A. In regard to the answers to this last question, I speak from my general knowledge and from the appearance of the statements

made by the auditor of the whole amount paid for that period, including a part of this time.

Q. Do you not know, as a matter of fact, that from first of January, 1874, to the first of November, 1874, crediting the bondholders with all cash payments on account of coupons and improvements, the books show they failed by over $120,000.00 of getting a net income during that time?

A. I have no doubt they failed of getting all the net income—of what amount exactly I cannot say now.

152 Q. How much money did you borrow from the Evansville National Bank on the Consolidated Southeastern bonds, and how much was owing that bank on the appointment of the receiver?

ATTORNEY FOR THE PLAINTIFF: These questions objected to as entirely a new matter.

A. They borrowed $65,000.00, if I remember right.

Q. What was done with that money?

A. It was used in payment of the indebtedness of the company on various accounts.

Q. Current indebtedness?

A. Indebtedness which the company had created for various purposes.

Q. How much did you borrow from the National Bank of the State of Missouri, and how much was due that bank on the date of the appointment of the receiver—all secured collateral bonds?

This question also objected to by attorney for the plaintiff.

A. About $65,000.00.

Q. How much from the Gallatin National Bank, Shawneetown?

153 Objected to by attorney for the plaintiff.

A. I think about $35,000.00.

Q. How much from the Greenville Bank?

Objected to by attorney for the plaintiff.

A. At the time the receiver was appointed, about $5,000,00.

Q. How much from the Highland Bank?

Objected to.

A. Nothing.

Q. How much from the Ausciatic Bank, in Europe?

A. I think about $150,000.00.

Objected to by attorney for the plaintiff.

Q. How much from the banks at Belleville, Illinois?

A. It was about $60,000.00.

Q. Were these loans all secured by a deposit of consolidated bonds as collateral?

A. They were.

Q. What general use was made of the moneys?

A. The money was used, as near as I now remember, for paying off the indebtedness of the company and providing for some coupon interest.

154 Q. In response to the question from counsel for the petitioners, you state that reference to the original order provided for the payment of labor, supply, and material claims, &c.; that you were at least in part responsible for the same. Did you state at that time all what had been said on this subject?

A. No; of course not. I recommended such a clause in the order.

Q. Did you ever consult Mr. Calhoun about it?

A. I do not know that I did.

Examination by attorney for the plaintiff:

Q. Was that clause assented to by the counsel of trustees for the bondholders?

A. Yes.

Q. The most of this money borrowed from the banks was applied to the payment of prior indebtedness and to renewing indebtedness of the company that had been of long standing prior to that time?

A. I think it was.

155 Q. You stated, General, that the bondholders did not receive all of the net earnings from January 1st, 1874, to November 1st, 1874. Do you remember?

A. Yes, I stated that.

Q. Is it not a fact that what they did not receive of the earnings between those periods was applied to pay off money that had been previously borrowed to pay them prior interest?

A. Some of it was so applied.

Q. Was the greater portion of it so applied?

A. I cannot state now what proportion.

Q. Was not the money borrowed at the banks at Belleville applied in that way?

A. I cannot remember.

156 And then petitioner read in evidence the exhibits to the various petitions filed by him in this cause and appearing elsewhere in the record.

And then petitioner read in evidence the following report:

157 "A."

5. *Report of the President and Board of Trustees of the St. Louis and Southeastern Railway Co. (Consolidated) to the Stockholders for the First Fiscal Year Ending July 31st, 1873. October 2d, 1873.*

158 St. Louis and Southeastern Railway Company (Consolidated).

OFFICE OF THE PRESIDENT,
ST. LOUIS, *October* 2d, 1873.

To the stockholders:

In making this report at the end of the first fiscal year since the consolidation it is proper to recite briefly the history of this com-

pany and its property. The organization of the company as now constituted was authorized by the stockholders in the months of July, August, and September, and went into effect October 1st, 1872. It was formed by the consolidation of the St. Louis and Southeastern Railway Company of Illinois and Indiana, the Evansville, Henderson and Nashville Railroad Company of Kentucky, the Nashville, Chicago and St. Louis Railroad Company of Tennessee (successor of the Edgefield and Kentucky Railroad Company), and the St. Louis and Southeastern Railway Company (Kentucky Division), by unanimous consent of the stockholders of the respective companies, and the legal status of the consolidated company is beyond question and entirely satisfactory.

At the date of the consolidation the St. Louis and Southeastern railway of Illinois and Indiana had been completed (early
159 in that year) from East St. Louis to Shawneetown and Evansville, with a branch extending from Belleville to O'Fallon—in all, 210 miles of main track and 10 miles of sidings. It had 20 engines, 12 passenger cars, 6 baggage, mail, and express cars, 6 caboose cars, 173 box and stock cars, 315 coal and flat cars, and 81 service cars. Its funded debt—consisting of first-mortgage 7 per cent. gold bonds, interest payable May and November—amounted to $3,362,000 (including $112,000 issued on the O'Fallon Branch); its floating debt amounted to $1,087,281.40, and its share capital to $4,325,000 of preferred and $2,706,900 of common stock, making the entire cost of the road in Illinois and Indiana $11,481,181.40.

The Evansville, Henderson and Nashville railroad was completed and opened for traffic from Henderson, on the Ohio river, to the Southern boundary line of Kentucky, at Guthrie—in all, 98 miles of main track and 4½ miles of sidings—in April, 1871. It had 10 engines—one of which was disabled and required reconstruction—7 passenger cars, 4 baggage, mail, and express cars, 1 caboose car, 96 box and stock cars, 165 coal and flat cars, and 4 service cars. Its funded debt consisted of $1,000,000 7 per cent. currency first-mortgage bonds. Its floating debt amounted to about $800,000—of which $700,000 has been since funded at par—and its share capital to $1,107,700 preferred stock and $1,385,900 of common stock, making the entire cost of that road $5,293,600.

The Nashville, Chicago and St. Louis railroad was completed from Guthrie to Nashville—48 miles, with 2½ miles of sidings—about January, 1859; but being simply a local road, with little or no equipment, its business was very small up to the date of consolidation. At that time it had 6 engines (4 requiring to be rebuilt), 5 passenger cars, 2 caboose cars, 25 box and stock cars and 38 flat and coal cars. Its cost was represented by $1,008,000 of first-
160 mortgage 7 per cent. gold bonds, subject to a lien of the State of Tennessee for $450,000, payable in the 6 per cent. bonds of that State; a floating debt of $141,522.84, and its share capital amounted to $390,000 preferred and $500,000 common stock; total cost, $2,039,522.84.

The St. Louis and Southeastern railway (Kentucky Division), extending from Madisonville (on the E., H. and N.) to Caseyville and

Shawneetown, was in process of construction, with 26 miles of the graduation completed, at a cost of about $357,800, paid for in capital stock and bonds.

It will be seen from the foregoing statement that the financial condition of the consolidated company at the date it commenced operations was as follows: First-mortgage bonds, $5,370,000; preferred capital stock, $5,822,700; common capital stock, $4,950,600; floating debt, $2,028,804.24; total, $18,172,104.24.

The entire equipment then owned was as follows: 36 engines, 24 passenger cars, 10 baggage, mail, and express cars, 9 caboose cars, 294 stock and box cars, 518 flat and coal cars, and 85 service cars. The entire length of road completed was 356 miles, with 17 miles of sidings; branches under construction, 52 miles; projected, 10 miles. Immediately after consolidation the road was, for the purpose of facilitating operation and administration, organized into two divisions, designated respectively as the St. Louis Division and the Nashville Division, the former comprising all the road north of the Ohio, and the latter all south of that river.

The St. Louis Division having been only recently opened, its road-bed, bridges, buildings, and track were in excellent condition, and, as has just been shown, it was furnished with a moderate equipment, all new and in good order.

The Nashville Division required the expenditure of a large sum of money for the purpose of renewing its bridges, improving
161 its track, providing additional sidings, erecting new buildings, and purchasing and repairing engines and cars. In order to equalize the equipment of the two divisions, and to enable the entire road to accommodate its increasing traffic, many other improvements and additions were found to be necessary, and have been provided as rapidly as possible.

The present equipment of your road is as follows: Engines, 52; passenger cars, 26; baggage, mail, and express cars, 12; caboose cars, 20; pay car, 1; Pullman palace cars, 2; box and stock cars, 461; flat and coal cars, 787; service cars, 104; total cars for traffic, 1,308; total engines, 52.

In addition, an equipment company has rented to this company 100 new box cars, which it has the right to purchase at the expiration of the rental period at their then actual value. The St. Bernard Coal Company have on the Nashville Division 100 four-wheel coal cars employed in the transportation of their coals, and the Equality Coal Company 30 cars in the service of that company.

Since the consolidation 1,000 tons of new iron rails (56 lbs. per yard) and 350 tons of new steel rails (56 to 64 lbs. per yard) have been laid on the main track; about 35 sidings, of the aggregate length of 73,000 feet, have been constructed; 50,000 cross-ties have been placed in the track; 1,100 feet of truss-bridges have been replaced, and 2,500 feet of trestle-bridging have been built or rebuilt. In order to run cars between St. Louis and Nashville without changing passengers or breading bulk the company's railway tracks have been extended from the depots at Evansville and Henderson, respectively, to low-water mark on the Ohio river;

ample transfer facilities have been provided, and cars now run through from terminus to terminus without change. Owing to the fact that the great bridge over the Mississippi
162 river at St. Louis is now rapidly approaching completion, and that the depot grounds owned by the company lie immediately at the eastern end of the bridge, it has been deemed advisable to make some expenditures for their improvement, in order that when the bridge is open for business your railway may secure the advantages due to its favorable location. The general condition of the road has been greatly improved by the expenditures of the year, its earning capacity has been nearly doubled, and the entire property and its appointments are in excellent condition, and will compare favorably with those of any railway in the West.

In order to provide means for paying the obligations of the companies entering into the consolidation and to make the additions and improvements above referred to, it was deemed best by the trustees and stockholders to make a consolidated mortgage upon the entire property, and to issue thereunder first consolidated mortgage bonds at the rate of $21,000 per mile, payable in thirty years, from Oct. 1st, 1872, with interest at seven per cent. in gold coin. These bonds have been duly issued and disposed of as follows:

$4,362,000 have been deposited with the trustees for exchange for outstanding first-mortgage bonds, as follows: $3,250,000 seven per cent., gold, St. L. and S. E. R'y Co. of Illinois and Indinia; $112,000 seven per cent., gold, O'Fallon Branch; $1,000,000 seven per cent. currency, E. H. and N. R. R. Co.

$1,821,500 have been sold and the proceeds applied to improvements, &c.

$3,316,500 remain unsold. This amount includes $450,000 which were deposited with the trustees to secure the vendor's lien on the N. C. and St. L. R. R. The balance, with the
163 exception of those pledged to secure temporarary loans, are in the hands of the company.

$9,500,000 total issue, secured by 312 miles of trunk line, 48 miles of branches, and 33 miles of sidings completed, with 62 miles of branch lines under construction.

The statement of the auditor, herewith submitted, exhibits the company's general balances.

It was fully expected that the unfunded debt existing at the time of consolidation and that incurred subsequently in putting the property into its present efficient condition would have been liquidated by the sales of the consolidated bonds, but, owing to the distrust of American railway securities prevailing in Europe and the disturbed condition of financial affairs in this country during the current year (and now culminating in a monetary convulsion of almost unexampled severity, and specially designated as a "railway panic"), the agents of the company have found it impossible to sell these bonds. Judging from the present outlook, it would be highly

imprudent to base any calculations upon the prospect of their negotiation in time to meet the maturing obligations of the company, and hence some other measure for relief must be found in order that the property may be maintained and preserved until the consolidated bonds can be disposed of advantageously. The earlier operations of the company have been attended by unusual difficulties and extraordinary expenses, owing to the unfinished condition of a portion of its road and appurtenances, a lack of sufficient equipment, and in part also to the conditions which generally attend the operation of new railways. Its business was generally curtailed in November, 1872, by the prevalence of the horse disease; in December, January, and part of February, 1873, by the very cold weather and the suspen-
164 sion of communication across the Ohio which existed during these months; in June and July, by the prevalence of Asiatic cholera, which visited every considerable station on the line between St. Louis and Nashville, raging with special virulence at the latter place, and which caused a partial suspension of business in several of the Southern States. Notwithstanding these adverse circumstances the gross receipts for the year ending July 31st amounted to $1,214,566.04, ($3,391.90 per mile per annum), of which $230,000 were net earnings, all realized from the business of the St. Louis Division, the entire earnings of the Nashville Division (the equipment upon which, owing to non-fulfillments of contracts for its delivery, was entirely inadequate) having been devoted to operation and improvements.

Your road has now, however, passed through its probationary period, and, with its greatly augmented facilities and growing business, the net earning of the future, unembarassed by the demands for improvements so necessary in the past, will be, doubtless, more satisfactory, and will constantly increase, unless seriously affected by the financial disturbances now prevailing.

The passenger travel between St. Louis and the Southeastern States, owing to the saving in time and the excellent facilities afforded, has been constantly increasing since the company began to invite it, and, as the line becomes better known, it will be still more highly appreciated, and in due time will command this class of business.

The coal traffic, especially, is now in a flourishing condition, and will probably continue to increase as rapidly during the present year as it did during the last. It can be made to constitute your principal source of revenue, as there are greater quantities and better varieties of coal on the line of the road and more reliable markets within reach than are possessed by any other railway in the Mississippi valley.

165 The character and extent of the general traffic between the grain and the cotton producing States justifies the location and building of this road; and as it must increase greatly from year to year the time will soon come when its volume will be so large as to place your road among that fortunate class which lie in the line of direct and necessary communication between the great producing

and consuming communities. This railway, running directly from St. Louis to Nashville, has, at either terminus, all the outlets and connections required for a great and independent line, and does not need any extension to enable it to command a great share of the business passing between those important points and the country tributary to them. The operations of the company will be materially facilitated and cheapened, however, by a bridge across the Ohio river, connecting the two divisions of the road, which there is reason to hope will be built at an early day by a corporation having a special charter for that purpose.

By order of the board of trustees.

EDW'D F. WINSLOW,
President.

166 *St. Louis and Southeastern Railway Co. (Consolidated).*

ST. LOUIS, MO., *October 1st*, 1873.

I have the honor to report that the books of this company show the following to have been the amounts of capital stock outstanding at the close of the fiscal year, in shares of $100 each:

	Preferred.	Common.	Total.
St. L. & S. E. R. W. Co. (Consolidated)	52,624	32,831	85,455
St. L. & S. E. R. W. Co. of Ill. and Ind } not then surrendered or exchanged for consolidated stock.	5,603	5,753	11,356
St. L. & S. E. R. W. Co. (K'y Division) }	----	3,578	3,578
E. H. & N. R. R. Co. }	----	7,344	7,344
Total	58,227	49,506	107,733

CHAS. W. GARDINER, *Secretary.*

Liabilities, July 31st, 1873.

Capital stock		$10,773,300 00
First-mortgage bonds, interest May and November		3,362,000 00
" " " " January and July		1,000,000 00
" " consolidated bonds, interest Feb. and August		1,821,500 00
Due State of Tennessee		450,000 00
Audited accounts and bills payable	$2,134,346 70	
Deduct available assets	177,441 88	
		1,956,904 82
Total liabilities		$19,363,704 82

Respectfully submitted,

J. P. HAINS, *Auditor.*

167 "B."

6. *The Second Annual Report to the Stockholders of the St. Louis & Southeastern Railway Company (Consolidated) for the Fiscal Year Ending July 31st*, 1874.

ST. LOUIS, Mo., *September 5th*, 1874.

Annual meeting 1st Tuesday in October of each year.

168 *Errata.*

Page 14, ninth line from top—"Coupons E. H. & N. unpaid," should read $43,000; "balance," on same line, should read $3,097,346.32, and "totals" should read $27,800,446.32.

Page 15, fifth line from bottom—"Coupons E. H. & N. due and unpaid," should read $40,083.34; total coupons due and unpaid should read $327,707.34, and grand totals, $4,892,281.33.

Page 24, last line—"Rate per mile per passenger," should read 3.097 cents.

Page 32, fourth line from bottom should read "Carmi, 20 x 60 feet."

169 Officers of the company—Edward F. Winslow, pres't & gen'l manager; James H. Wilson, vice-president; J. F. Alexander, treasurer; John P. Hains, auditor; Charles W. Gardiner, secretary.

Trustees—Samuel Bayard, John A. Reitz, William Heilman, Thomas E. Garvin, James H. Wilson, J. F. Alexander, Edward F. Winslow, Samuel B. Vance, William L. Gordon, W. J. Marshall, Joseph J. Castles, Bluford Wilson, Charles W. Gardiner.

Executive committee—J. F. Alexander, Samuel Bayard, Charles W. Gardiner, in conjunction with the president.

Officers of the railway—A. E. Shrader, general sup't & gen'l freight agent; G. S. Winslow, ass't gen'l superintendent; John W. Mass, gen'l ticket agent; C. H. Crosby, ass't gen'l freight agent.

170 *St. Louis & Southeastern Railway Co. (Consolidated).*

OFFICE OF PRESIDENT,
ST. LOUIS, *September* 5, 1874.

To the stockholders:

Since my last annual report the business of the country has been greatly depressed because of the panic of last September. This condition of affairs has largely affected the earnings of your road, has prevented the sale of the consolidated bonds, and has brought your company into great financial trouble. Weighed down by a large floating debt, there is no way out of this embarrassment save by liberal aid from your creditors of all kinds.

This debt, created to finish and equip the road, to provide for expected increase of traffic, and to carry forward the affairs of the company until the increase of business to result from the advantages provided and to be secured were realized, is now so burdensome that the company can no longer provide for paying at maturity any part of it.

In order to learn the temper of holders of the first-mort-
171 gage gold bonds, I went to Europe, by request, and there met representative parties, who stated that reasonable concessions will be made, provided junior and other creditors will also yield something of their rights and claims. The foreign bondholders have designated persons in New York who are authorized to consult with the company and agree on some plan of settlement. This must be made so comprehensive that there will be required no further agreements, and as such plan involves time in its adjustment and development, and as our necessities are urgent, many of the bondholders are desirous of having the property and income of the company placed in charge of the courts pending such adjustment, that no further embarrassments or difficulties may be forced upon the company, and that legal priority may be had in disbursing our net revenues. I concur in this view of our affairs because the bondholders are entitled to their interest money prior to any other creditors, except where payments are required to protect property in which they are interested.

Notwithstanding the general depression which has so largely affected our traffic the road has earned $31,204.43 gross and $55,251.86 net more than during the preceding year.

Your property is of great value and will demonstrate the wisdom of its creation long before others more promising earn an interest on the capital invested in them.

The tables and statements herewith submitted exhibit in detail the situation and the comparative condition and business of the company and its railway. The road has been carefully and
172 economically worked, and, with its equipment, is in good condition, having, without further additions, capacity for earning $150,000 to $175,000 per month.

The measure of economy in operation of railways cannot be ascertained by any system of percentage of expenses to gross earnings, as the cost of operating may exceed receipts and yet great economy be exercised. The only way to determine the question of degree of economy is to analyze carefully every expenditure, and find, by comparison with the same items upon roads similarly situated, that labor and material have been supplied at the lowest possible cost, and used with due regard for the circumstances connected with the operation of the road and the conduct of its business. The investor and owner generally examines reports in order to learn what percentage has been declared as net earnings, but this is a very fallacious method of criticising management.

In this railway we have a long line and an insufficient traffic. The property requires as large disbursements for maintenance and expenses in many particulars as the same length of track of a road which has three times the business. If the present traffic was concentrated upon half the mileage it is apparent there would be a great change in percentage—for instance, taxes are assessed upon each mile of track.

In fact, your road has four terminal points, and is formed of two distinct railways, separated by a gap of ten miles; has a gauge of 4

feet 9 inches north and 5 feet south of the river. A careful
173 examination of the items making up the sum of the cost of operating your road during the past year will show that rigid economy has been exercised in every department. The heavy grades and sharp curves upon the Nashville Division and the great weight of locomotives required there and at all terminal stations, coupled with the large number of shifting engines demanded by the nature and traffic of our railway, should always be carefully considered in making up any opinion of our expenses as relating to earnings. Notwithstanding these circumstances, our track (390 miles) and bridges have been maintained at an expense annually of $469.07, monthly of $39.09, and daily of 128½ cents per mile. Their condition is as good as that of any road of similar character in the West.

On the 27th day of May last our principal machine-shops, located at Mt. Vernon, Illinois, were accidentally destroyed by fire. It has been decided to rebuild them, and liberal donations have been made by citizens of that place. The total loss, less the donations, will not exceed $15,000, and, as rebuilt, the shops will be more complete and convenient than before.

At the proper time it is intended to remove the machinery now at Edgefield, Tennessee, to Henderson, Kentucky, where temporary buildings and stationary power have been provided, and good water can be eventually obtained from the city water-works now being constructed.

The crops along our railway in Illinois and Indiana for
174 this year are quite an average in yield and quality, but south of the Ohio there has been, because of drouth generally, an almost complete failure.

Last May the Louisville, Nashville and Great Southern and the Nashville and Chattanooga Railroad Companies, controlling the only rail outlets south from Nashville, refused to receive freight coming from territory reached by your road and its connections, except at rates which would allow us nothing for haul, and since that time our freights have been confined to locals almost wholly. This unlawful and injurious combination of two stronger companies to aid in destroying the business of a weaker one has been brought about by a variety of causes, but is defended by the officers of those companies solely on the ground of self-protection.

We were active in securing shipments of Green Line freights south, and this somewhat injured the business of the "main stem" of the Louisville and Nashville and the "northwestern branch" of the Nashville and Chattanooga railroads; but it is undoubtedly true that we benefited the other portions of their respective roads quite as much as we injured the business of said "main stem" and "branch," and it is also probably true that the combination, while it has injured us, has disappointed and damaged them.

Such a policy cannot long be maintained or defended; it is behind the age and will certainly react on its originators. As it is (we are counselled) contrary to the laws of Tennessee, our rights and those of the public may be secured through the courts if in no other way.

175 The business of the road for the ensuing year will, doubtless, show an increase in volume, and the net results, because of the low price of labor and materials, will be more satisfactory than hitherto.

The development of the coal traffic is gratifying, and with the revival of trade and manufactures the increase will keep pace with the facilities afforded for shipment. This traffic will prove the most reliable and remunerative of the road, and it is to be hoped that a policy which has caused so large a preparation on the part of shippers will be supplemented by continued improvement in the facilities supplied by the company. More track room at terminal stations, particularly East St. Louis and Nashville, Tennessee, and additional coal cars are even now needed, and must be supplied next season.

The nine and one-half miles of railway yet to be constructed between Evansville and Henderson is the most important addition required by our interests, for, when completed, no interruption of business would ever occur, while the running time between St. Louis and Nashville would be shortened an hour and a half.

The necessity for closing this gap, and for a bridge across the Ohio, increases each year. Some examinations of the river, near Evansville, show that an iron bridge can now be built, not over 1,700 feet in length, and at a cost of only about $800,000, including approaches. A liberal charter, authorizing the construction of such a bridge, has been obtained from the Kentucky Legislature by parties friendly to your interests. The amount paid by this company for transfer across the Ohio river during the year was $70,626.56, of which $62,643.67 was on account of freight. This, of course,

176 does not include the income of the transfer company derived from local and other traffic. A bridge would add largely to the business of this railway and to that of connecting lines. The sum paid annually for transfer is sufficient even now to pay a fair interest on the cost of a first-class structure. If the condition of your company was such as to inspire confidence in its contracts it would be comparatively easy to cause such a bridge to be built.

But two accidents of a serious nature have happened to passenger trains (both due to unavoidable causes), and but one person has been much injured. He has commenced an action for damages, but is believed to be entirely recovered. All trains have been run during the year with great regularity, and this evidences the competency of those in charge of the transportation and track departments.

The track will hereafter require considerable renewals of rails and cross-ties, which will add somewhat to expense of maintenance as compared with the past year.

Respectfully submitted.

EDWARD F. WINSLOW, *President.*

177 *St. Louis & Southeastern Railway Co. (Consolidated).*

OFFICE OF SECRETARY,
ST. LOUIS, MO., *Sept.* 1*st*, 1874.

DEAR SIR: I have the honor to report that the books of this com-

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Respectfully submitted.

EDWARD F. WINSLOW, *President.*

177 *St. Louis & Southeastern Railway Co. (Consolidated).*

OFFICE OF SECRETARY,
ST. LOUIS, MO., *Sept. 1st*, 1874.

DEAR SIR: I have the honor to report that the books of this com-

pany show the following to have been the number of shares ($100 each) of capital stock outstanding at the close of the fiscal year:

	Prefer'd.	Common.	Total.
St. Louis & Southeastern Railway Co. (Consolidated)	56,730½	32,361½	89,092
St. Louis & Southeastern Railway Co. (Consolidated). (To be issued on surrender of scrip held.)	1,500	1,500	3,000
St. Louis & Southeastern Railway Co., of Illinois and Indiana. (Not then surrendered or exchanged.)	1,518	4,753	6,271
St. Louis & Southeastern Railway Co., Kentucky Division. (Not then surrendered or exchanged.)	------	3,578	3,578
Evansville, Henderson & Nashville Railroad Co. (Not then surrendered or exchanged.)	------	6,470	6,470
Total	59,748½	48,662½	108,411

Yours truly, E. L. ABBETT, *Secretary.*

To Edward F. Winslow, president.

178 *St. Louis & Southeastern Railway Co. (Consolidated).*

OFFICE OF THE AUDITOR,
ST. LOUIS, *Sept. 1st*, 1874.

Edward F. Winslow, president.

DEAR SIR: Herewith I hand you the following statements, compiled from our official records, showing the result of operation from August 1st, 1873, to July 31st, 1874:

A—General balance sheet.
B—General account current.
C—Earnings and operating expenses—entire line.
D—Condensed comparative statement of earnings—entire line.
E—Comparative statement of earnings—St. Louis Division.
F—Comparative statement of earnings—Nashville Division.
G—Operating expenses of entire line.
H—Statement of funded debt.
I—Expenditures for improvement and equipment.
J—Statement of passenger traffic.
K—Statement of freight traffic.

Very respectfully, JOHN P. HAINS, *Auditor.*

A.

General Balance-Sheet.

July 31st, 1874.

Cost of road and appurtenances		$19,019,971 97	Capital stock, preferred	$5,974,850 00	
Improvements and additional equipment, St. Louis Division	$436,488 58		Capital stock, common	4,866,250 00	
Improvements and additional equipment, Nashville Division	428,817 13				$10,841,100 00
		865,305 71	Bonds, 1st mortgage S. E. railway	3,250,000 00	
Rebuilding Mt. Vernon shops		9,355,12	Bonds, O'Fallon Branch	112,000 00	
Funding coupons		100 00	Bonds, 1st mortgage E., H. & N.	1,000,000 00	
Balance to debit of income account		138,461 63	Bonds, 1st consolidated	9,500,000 00	
Coupons, E., H. & N., unpaid	25,500 00				13,862,000 00
Coupons, 1st mortgage S. E. R'y, unpaid	277,562 00		Balance		3,079,846 32
Coupons, 1st consolidated, unpaid	107,285 00				
Coupons, O'Fallon branch, unpaid	10,779 89				
		421,126 89			
Taxes unpaid in Kentucky	21,500 00				
Taxes unpaid in other States	55,625 00				
		77,125 00			
Consolidated bonds in hands of trustees	4,362,000 00				
Consolidated bonds unsold	2,888,500 00				
		7,250,500 00			
Mt. Vernon city bond, unsold		1,000 00			
		$27,782,946 32			$27,782,946 32

General Account Current from August 1st, 1873, to July 31st, 1874.

Earnings for the fiscal year		$1,245,665 91
Cash from sale of land in East St. Louis	48,741 00	
Cash from sale of land in Guthrie	1,262 62	
Cash from Henderson wharf-boat	585 84	
		50,589 46
Cash from sale of 428,000 1st consol'd bonds	391,607 38	
Cash from sale of 43,000 1st-mortgage bonds	31,687 47	
Cash from sale of 112,000 O'Fallon Branch bonds	71,334 79	
Cash from sale of 4,000 Hamilton county bonds	2,650 00	
		497,279 64
Cash collected on Mascoutah coupons		1,400 00
Balance		3,079,846 32
		$4,874,781 33

Liabilities, as per report of July 31, 1873—balance	$1,956,904 82	
Due State of Tennessee, in State bonds (of which $175,000 in bonds has been paid)	450,000 00	
		$2,406,904 82
Operating expenses for the fiscal year		960,414 05
Improvement and equipment, St. Louis Div	245,141 78	
Improvement and equipment, Nashville Div	149,979 34	
		395,121 12
Discount, interest, and commissions		271,943 47
Payments account American Contract Co. purchase		21,469 32
Taxes paid in Kentucky		7,500 00
Taxes unpaid in Kentucky	21,500 00	
Taxes unpaid in other States	55,625 00	
		77,125 00
Rebuilding machine-shops at Mt. Vernon, Ill		9,355 12
Claims for services, not included in operating or improvement accounts		42,065 86
Transfer track, Nashville Division	477 91	
Transfer track, St. Louis Division	1,675 34	
		2,153 25
Funding coupons		100 00
Expenses advertising and negotiating bonds		23,738 13
Coupons, 1st consol'd, due Aug., 1873, paid	66,630 70	
Coupons, 1st m'tg., due Nov., 1873, paid	63,879 55	
Coupons, E., H. & N., due July, '73, & Jan., '74, paid	65,198 40	
Coupons, E., H. & N., due July, 1872, paid by Winslow & Wilson, and not heretofore charged	35,000 00	
		230,708 65
Premium on gold to pay coupons		5,055 65
Coupons, 1st m'tg., due and unpaid	215,000 00	
Coupons, 1st consol'd, due and unpaid	64,000 00	
Coupons, O'Fallon Branch, due and unpaid	8,624 00	
Coupons, E., H. & N., due and unpaid	22,583 34	
		310,207 34
Coupons, 1st m'tg., fractional parts, not due	62,562 00	
Coupons, 1st consol'd, fractional parts, not due	43,285 00	
Coupons, O'Fallon Branch, fract'l p'ts, not due	2,155 89	
Coupons, E., H. & N., fractional parts, not due	2,916 66	
		110,919 55
		$4,874,781 33

Coupons unpaid are estimated in currency.

Earnings and Operating Expenses for the Fiscal Year Ending July 31st, 1874.

Month.	Earnings.			Operating expenses.			Net earnings.		
	St. Louis Div.	Nashville Div.	Total.	St. Louis Div.	Nashville Div.	Total.	St. Louis Div.	Nashville Div.	Total.
August, 1873	$67,356 65	$45,805 98	$113,162 63	$39,503 59	$40,895 03	$80,398 62	$27,853 06	$4,910 95	$32,764 01
Sept'r, "	81,221 19	42,492 57	123,713 76	50,301 55	40,803 88	91,105 43	30,919 64	1,688 69	32,608 33
October, "	76,466 09	46,101 70	122,567 79	47,148 41	40,843 13	87,991 54	29,317 68	5,258 57	34,576 25
Novem'r, "	57,638 24	40,609 34	98,247 58	41,040 28	38,241 20	79,281 48	16,597 96	2,368 14	18,966 10
Decem'r, "	56,624 48	39,717 41	96,341 89	38,159 86	35,908 54	74,068 40	18,464 62	3,808 87	22,273 49
January, 1874	69,072 22	42,828 00	111,900 22	45,819 93	39,043 73	84,863 66	23,252 29	3,784 27	27,036 56
February, "	56,349 03	43,097 67	99,446 70	43,023 47	39,460 35	82,483 82	13,325 56	3,637 32	16,962 88
March, "	59,662 50	48,308 41	107,970 91	44,664 54	42,055 50	86,720 04	14,997 96	6,252 91	21,250 87
April, "	52,599 47	41,397 17	93,996 64	43,904 67	40,690 80	84,595 47	8,694 80	706 37	9,401 17
May, "	50,183 55	38,374 78	88,558 33	37,410 84	37,050 19	74,461 03	12,772 71	1,324 59	14,097 30
June, "	56,711 73	40,227 05	96,938 78	37,372 18	33,910 06	71,282 24	19,339 55	6,316 99	25,656 54
July, "	51,556 70	41,263 98	92,820 68	32,065 25	31,097 07	63,162 32	19,491 45	10,166 91	29,658 36
	$735,441 85	$510,224 06	$1,245,665 91	$504,414 57	$459,999 48	$960,414 05	$235,027 28	$50,224 58	$285,251 86

Average net earnings per month, St. Louis Division ..... $19,585 60.
Average net earnings per month, Nashville Division ..... 4,185 38.
Average net earnings per month of whole line ..... 23,770 98.
Operating expenses, 12 months, St. Louis Division, 68.04 per cent. of gross earnings.
Operating expenses, 12 months, Nashville Division, 90 16 per cent. of gross earnings.
Operating expenses, 12 months, whole line, 77.10 per cent. of gross earnings.

Condensed Comparative Statement of Earnings—Entire Line. For Fiscal Year Ending July 31st, 1874.

1872–1873.				Months.	1873–1874.			
Passengers.	Freight.	Mails, express & miscellaneous.	Total.		Passengers.	Freight.	Mails, express & miscellaneous.	Total.
$29,154 46	$63,413 18	$912 10	$93,479 74	August	$31,200 79	$78,641 06	$3,320 78	$113,162 63
27,927 44	61,984 27	3,311 40	93,223 11	September	33,120 20	85,263 09	5,330 47	123,713 76
35,446 75	74,962 10	3,949 00	114,357 85	October	41,748 77	77,071 74	2,201 16	121,021 67
25,504 56	67,974 66	5,236 00	98,715 22	November	26,278 26	66,827 18	5,142 14	98,247 58
21,482 15	45,591 15	5,236 00	72.309 30	December	24,780 73	67,314 00	4,247 16	96,341 89
23,418 38	54,313 73	5,393 40	83,125 51	January	27,935 65	78,551 37	5,413 20	111,900 22
23,196 94	73,409 53	5,218 31	101,824 78	February	25,594 79	69,228 16	4,623 75	99,446 70
27,557 37	81,256 43	5,608 80	114,422 60	March	28,643 23	75.092 72	4,234 96	107,970 91
29,176 66	68,829 55	5,750 21	103,756 42	April	28,492 92	62,074 11	3,429 61	93,996 64
36,582 01	76,639 03	5,936 15	119.157 19	May	31,476 88	52,905 79	4,175 66	88,558 33
31,141 12	83,386 05	4,492 33	119,019 50	June	31,983 07	60,355 33	4,600 38	96,938 78
27,140 69	69,240 06	3,143 39	99,524 14	July	34,244 90	54,000 40	4,575 38	92,820 68
$337,728 53	$820,999 74	$54,187 09	$1,212,915 36		$365,500 19	$827,324 95	$51,294 65	$1,244,119 79

Increase for year ending July 31st, 1874, $31,204 43.

E.

Comparative Statement of Earnings—St. Louis Division.

1872–1873.				Month.	1873–1874.			
Passengers.	Freight.	Mail, express, & miscellaneous.	Total.		Passengers.	Freight.	Mail, express, & miscellaneous.	Total.
$16,418 41	$44,756 81	$912 10	$62,087 32	August	$18,441 42	$47,244 11	$1,671 12	$67,356 65
17,688 34	45,128 72	2,374 80	65,191 86	September	20,229 07	57,484 35	3,507 77	81,221 19
23,139 80	55,017 25	2,374 80	80,531 85	October	24,771 09	49,123 08	1,025 80	74,919 97
16,037 36	45,774 74	2,886 80	64,698 90	November	15,611 01	39,297 06	2,730 17	57,638 24
13,451 80	27,637 75	2,886 80	43,976 35	December	15,744 01	38,427 28	2,453 19	56,624 48
13,010 12	33,730 75	3,018 00	49,758 87	January	14,996 70	51,038 86	3,036 66	69,072 22
13,505 85	40,747 78	2,862 81	57,116 44	February	15,629 11	38,063 92	2,656 00	56,349 03
17,080 39	42,902 07	3,171 56	63,154 02	March	17,259 90	39,975 03	2,427 57	59,662 50
18,426 77	38,221 43	3,347 25	59,995 45	April	18,037 28	32,972 87	1,589 32	52,599 47
20,381 47	44,617 28	3,533 19	68,531 94	May	17,998 67	29,923 18	2,261 70	50,183 55
19,948 03	51,440 78	2,528 26	73,917 07	June	20,443 66	33,594 67	2,673 40	56,711 73
18,991 82	40,094 56	1,873 37	60,959 75	July	20,231 92	28,676 38	2,648 40	51,556 70
$208,080 16	$510,069 92	$31,769 74	$749,919 82		$219,393 84	$485,820 79	$28,681 10	$733,895 73

Decrease for the year ending July 31, 1874, $16,024 09.

Comparative Statement of Earnings—Nashville Division.

1872–1873.				Month.	1873–1874.			
Passengers.	Freight.	Mail, express, & miscellaneous.	Total.		Passengers.	Freight.	Mail, express, & miscellaneous.	Total.
$12,736 05	$18,656 37	----------	$31,392 42	August	$12,759 37	$31,396 95	$1,649 66	$45,805 98
10,239 10	16,855 55	$936 60	28,031 25	September	12,891 13	27,778 74	1,822 70	42,492 57
12,306 95	19,944 85	1,574 20	33,826 00	October	16,977 68	27,948 66	1,175 36	46,101 70
9,467 20	22,199 92	2,349 20	34,016 32	November	10,667 25	27,530 12	2,411 97	40,609 34
8,030 35	17,953 40	2,349 20	28,332 95	December	9,036 72	28,886 72	1,793 97	39,717 41
10,408 26	20,582 98	2,375 40	33,366 64	January	12,938 95	27,512 51	2,376 54	42,828 00
9,691 09	32,661 75	2,355 50	44,708 34	February	9,965 68	31,164 24	1,967 75	43,097 67
10,476 98	38,354 36	2,437 24	51,268 58	March	11,383 33	35,117 69	1,807 39	48,308 41
10,749 89	30,608 12	2.402 96	43,760 97	April	10,455 64	29,101 24	1,840 29	41,397 17
16,200 54	32,021 75	2,402 96	50,625 25	May	13,478 21	22,982 61	1,913 96	38,374 78
11,193 09	31,945 27	1,964 07	45,102 43	June	11,539 41	26,760 66	1,926 98	40,227 05
8,148 87	29,145 50	1,270 02	38,564 39	July	14,012 98	25,324 02	1,926 98	41,263 98
$129,648 37	$310,929 82	$22,417 35	$462,995 54		$146,106 35	$341,504 16	$22,613 55	$510,224 06

Increase for the year ending July 31, 1874, $47,228.52.

185 G.

Statement of Operating Expenses in Detail for the Fiscal Year Ending July 31st, 1874.

CONDUCTING TRANSPORTATION.

	St. Louis Div.	Nashville Div.	Total.
Advertising	$2,076 28	$1,362 06	$3,438 34
Printing and stationery	5,670 58	5,345 67	11,016 25
Loss and damage to property	4,979 38	7,377 68	12,357 06
Loss and damage to stock	5,759 72	4,603 70	10,363 42
Injury to persons	5,783 00	1,465 20	7,248 20
Conductors, bag'gem'n & brakem'n	31,323 69	29,573 85	60,897 54
Agents and clerks	29,719 22	23,695 42	53,414 64
Station furniture and fixtures	752 56	404 33	1,156 89
Station labor	29,955 93	17,504 27	47,460 20
Station expense	9,736 12	12,397 03	22,133 15
Train expense	4,158 10	3,667 42	7,825 52
Mail expense	761 77	1,630 00	2,391 77
Mileage and rental of cars	23,416 45	2,462 58	25,879 03
Telegraph	10,439 62	11,142 35	21,581 97
Transfer and incidental expenses	6,323 36	4,208 69	10,532 05
	$170,855 78	$126,840 25	$297,696 03

MAINTENANCE OF CARS.

Material	$21,957 72	$8,951 85	$30,909 57
Pass'g'r and bag'ge cars, repairs of	14,439 08	16,337 47	30,776 55
Freight-cars, repairs of	19,628 20	34,033 88	53,662 08
Foreign cars, repairs of	170 07	242 43	412 50
Incidentals	665 81	334 29	1,000 10
Sleeping-cars, repairs of	673 71	436 43	1,110 14
	$57,534 59	$60,336 35	$117,870 94

MOTIVE POWER.

Fuel	$33,762 40	$32,255 85	$66,018 25
Water supply	6,387 40	8,920 57	15,307 97
Wood and water stations	1,520 31	761 40	2,281 71
Oil, tallow, and waste	11,851 85	6,088 04	17,939 89
Materials	4,377 40	1,298 83	5,676 23
Engineers and firemen	39,130 83	47,042 50	86,173 33
Watchmen and wipers	9,945 23	10,775 54	20,720 77
Repairs, engines and tenders	30,005 92	26,001 87	56,007 79
Engine hire, &c.	357 12	25 95	383 07
Shop tools and incidentals	5,079 96	3,061 07	8,141 03
	$142,418 42	$136,231 62	$278,650 04

186 G.—Continued.

MAINTENANCE OF WAY.

	St. Louis Div.	Nashville Div.	Total.
Cattle guards and crossings	$1,484 22	$750 40	$2,234 62
Ties and timbers	3,503 43	9,363 59	12,867 02
Iron, chairs, spikes, &c.	3,563 00	2,419 28	5,982 28
Surfacing and ballast	826 02	2,462 29	3,288 31
Track tools	1,923 82	2,563 04	4,486 86
Repairs, bridges and trestles	3,419 59	14,112 27	17,531 96
Repairs, tracks	61,700 13	63,682 13	125,382 26
Superintendence and incidentals	5,836 57	2,503 56	8,340 13
Watchmen	1,774 29	734 51	2,508 80
Fencing	318 09		318 09
	$84,349 16	$98,591 17	$182,940 33

GENERAL EXPENSES.

Salaries, general officers and clerks	$26,538 20	$26,712 57	$53,250 77
Legal expenses	2,721 01	2,113 01	4,834 02
Expenses of general offices	5,399 11	4,090 73	9,489 84
Repairs of buildings	4,110 50	1,530 28	5,640 78
General expenses and incidentals	6,487 80	3,553 50	10,041 30
	$45,256 62	$38,000 09	$83,256 71

RECAPITULATION.

Conducting transportation	$170,855 78	$126,840 25	$297,696 03
Maintenance of cars	57,534 59	60,336 35	117,870 94
Motive power	142,418 42	136,231 62	278,650 04
Maintenance of way	84,349 16	98,591 17	182,940 33
General expenses	45,256 62	38,000 09	83,256 71
	$500,414 57	$459,999 48	$960,414 05

H.

Funded Debt—July 31st, 1874.

Description.	Date of issue.	Date of maturity.	Interest.		First coupon due.	Total am't issued.	To be retired.	Total am't outstanding.
			Rate.	Payable.				
1st m't'g St. L. & S. E.	Oct. 1, 1869	Oct. 1, 1894	7 ℔ ct., gold	1st Nov. & May	May 1, 1870	$3,250,000	$3,250,000	
O'Fallon Branch	Nov. 1, 1872	Oct. 1, 1894	7 ℔ ct., gold	1st Nov. & May	May 1, 1873	112,000	112,000	
1st mort. E. H. & N.	July 1, 1867	July 1, 1897	7 ℔ ct., c'y	1st Jan. & July	Jan. 1, 1868	1,000,000	1,000,000	
1st consol mort.	Oct. 1, 1872	Nov. 1, 1902	7 ℔ ct., gold	1st May & Nov.	May 1, 1873	3,250,000	----------	*$3,250,000
1st consol mort.	Oct. 1, 1872	Nov. 1, 1902	7 ℔ ct., gold	1st Feb. & Aug.	Feb. 1, 1873	6,250,000	----------	†6,250,000
						$13,862,000	$4,362,000	$9,500,000

* This amount, $3,250,000, is in hands of trustees to retire 1st mort. St. Louis & Southeastern railway bonds.
† Of which 1,000,000 is in hands of trustees to retire 1st mort. Evansville, Henderson & Nashville R. R. bonds.
And 112,000 is in hands of trustees to retire O'Fallon Branch bonds.
Of the balance, 2,249,500 bonds have been sold.
Leaving 2,888,500 unsold.

$9,500,000 total funded debt.

188 I.

Expenditures for Permanent Improvement and Equipment During Fiscal Year Ending July 31, 1874.

	St. Louis Div.	Nashville Div.	Total.
Freight cars	$87.914 27	$40,499 06	$128,413 33
Locomotives	45,657 83	58,717 25	104,375 08
New rails and fastenings	38,164 24	27,031 59	65,195 83
Real estate	1,186 42		1,186 42
Windmill, Belleville	341 29		341 29
Watch-houses	20 87		20 87
Legal expenses	2,000 00	162 50	2,162 50
Salaries and engineering	6,219 69	387 75	6,607 44
Tools and machinery	581 64		581 64
Shops and round-houses	4,452 41	5,259 32	9,711 73
Trestle at East St. Louis	15,476 45		15,476 45
Bridging	1,718 54	1,487 61	3,206 15
Buildings	5,373 83	7,021 86	12,395 69
Rebuilding telegraph	4,396 31		4,396 31
Evansville yard	1,825 21		1,825 21
East St. Louis yard	2,284 97		2,284 97
Mt. Vernon, Ill., yard	329 16		329 16
Right of way	1,159 40		1,159 40
New sidings	3,687 66	2,274 48	5,962 14
Railroad crossings	431 90	152 65	584 55
Fencing	3,503 39		3,503 39
Shawnee levee	2,133 51		2,133 51
Transfer at Ohio river	142 60	132 80	275 40
Sand and section houses	200 20	297 10	497 30
Evansville hotel	1,550 00		1,550 00
Turn-tables	56 67		56 67
Signal at East St. Louis	400 00		400 00
Wood and water stations	32 50	1,240 47	1,272 97
Rent of depot grounds	9,600 00	437 50	10,037 50
Expense on sterling loan	4,300 82		4,300 82
Sand furnaces		77 50	77 50
Car-hoist, Henderson (royalty)		1,500 00	1,500 00
Retirement E., H. & N. capital stock		2,900 00	2,900 00
Grading at Henderson		399 90	399 90
	$245,141 78	$149,979 34	$395,121 12

189 J.

Statement of Number of Passengers Carried From All Stations During the Fiscal Year Ending July 31st, 1874.

St. Louis Division.		Nashville Division.	
Stations.	No.	Stations.	No.
East St. Louis	19,959	Henderson	6,663
French Village	754	Sebree	1,918
Birkner's	2,024	Slaughter's	1,856
Belleville	12,353	Hanson	1,084
Rentchler	1,768	Madisonville	4,962
O'Fallon	1,684	Earlington	3,040
Mascoutah	12,635	Morton's	1,064
Pensoneau	28	Nortonville	3,032
New Memphis	1,914	Petersburgh	768
Queen's Lake	113	Crofton	1,564
Venedy	3,184	Kelley's	812
Okawville	4,120	Hopkinsville	9,990
Addieville	1,600	Casky	1,669
Nashville, Ill.	8,618	Pembroke	1,841
Beaucoup	560	Trenton	1,835
Ashley	8,476	Guthrie	6,806
Roach's	52	Sadler's	952
Woodlawn	1,033	Fort's	308
Driver's	110	Adams'	1,314
Mt. Vernon, Ill.	6,917	Cedar Hill	1,628
Opdyke	874	Springfield	4,696
Belle Rive	1,564	Greenbrier	480
Dahlgren	1,730	Baker's	250
Delafield	518	Goodlett's	884
McLeansboro	3,582	Edgefield Junction	280
Hoodville	138	Nashville, Tenn.	17,235
Rectorville	362		
Eldorado	1,511		
Equality	1,956		
Cypress Junction	18		
Shawneetown	2,298		
Thackeray	373		
Enfield Junction	80		
Enfield	2,387		
Carmi	5,147		
Hawthorne	1,044		
Wabash Station	486		
Upton	28		
Mt. Vernon, Ind.	9,272		
St. Philip	1,094		
Evansville	16,310		
	138,583		76,331

Making a total of 214,914 passengers carried an average distance of $54\frac{70}{100}$ miles, or equal to 11,800,000 one mile.

Mileage on above, 11,800,000.

The earnings on above, $365,500.19.

Rate per mile per passenger was 3.97 cents.

188 I.

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Rentchler	1,768	Madisonville	4,962
O'Fallon	1,684	Earlington	3,040
Mascoutah	12,635	Morton's	1,064
Pensoneau	28	Nortonville	3,032
New Memphis	1,914	Petersburgh	768
Queen's Lake	113	Crofton	1,564
Venedy	3,184	Kelley's	812
Okawville	4,120	Hopkinsville	9,990
Addieville	1,600	Casky	1,669
Nashville, Ill.	8,618	Pembroke	1,841
Beaucoup	560	Trenton	1,835
Ashley	8,476	Guthrie	6,806
Roach's	52	Sadler's	952
Woodlawn	1,033	Fort's	308
Driver's	110	Adams'	1,314
Mt. Vernon, Ill.	6,917	Cedar Hill	1,628
Opdyke	874	Springfield	4,696
Belle Rive	1,564	Greenbrier	480
Dahlgren	1,730	Baker's	250
Delafield	518	Goodlett's	884
McLeansboro	3,582	Edgefield Junction	280
Hoodville	138	Nashville, Tenn.	17,235
Rectorville	362		
Eldorado	1,511		
Equality	1,956		
Cypress Junction	18		
Shawneetown	2,298		
Thackeray	373		
Enfield Junction	80		
Enfield	2,387		
Carmi	5,147		
Hawthorne	1,044		
Wabash Station	486		
Upton	28		
Mt. Vernon, Ind.	9,272		
St. Philip	1,094		
Evansville	16,310		
	138,583		76,331

Making a total of 214,914 passengers carried an average distance of $54\frac{39}{100}$ miles, or equal to 11,800,000 one mile.

Mileage on above, 11,800,000.

The earnings on above, $365,500.19.

Rate per mile per passenger was 3.97 cents.

190 K.

Statement Showing Amount of Freight, Exclusive of Coal, Forwarded from all Stations during the Fiscal Year Ending July 31, 1874.

Stations.	Tonnage (in lbs.)	Stations.	Tonnage (in lbs.)
East St. Louis	67,632,618	Henderson	47,191,900
French Village	90,550	Sebree	1,900,900
Birkner's	323,000	Slaughter's	1,399,860
O'Fallon	1,419,000	Hanson	989,870
Belleville	27,568,100	Madisonville	3,876,990
Rentchler	983,988	Earlington	829,999
Mascoutah	34,266,600	Morton's	1,946,000
New Memphis	4,720,404	Nortonville	19,859,000
Queen's Lake	120,000	Petersburg	1,807,000
Venedy	9,616,000	Crofton	1,939,645
Okawville	7,911,400	Kelley's	257,900
Addieville	531,900	Hopkinsville	24,904,300
Nashville, Ill.	36,342,405	Casky	713,000
Beaucoup	1,368,000	Pembroke	3,998,000
Ashley	26,776,900	Trenton	2.800,005
Woodlawn	1,773,000	Guthrie	6,987,648
Mt. Vernon, Ill.	20,719,919	Sadler's	1,980,000
Opdyke	2,796,000	Fort's	525,900
Belle Rive	2,119,987	Adams	761,800
Dahlgren	10,348,000	Cedar Hill	2,729,000
Delafield	4,188,000	Springfield	18,963,945
McLeansboro	19,194,000	Greenbrier	2,797,900
Hoodville	208,000	Baker's	3,990,000
Rectorville	1,084,000	Goodlettsville	383,000
Eldorado	8,898,000	Edgefield Junction	1,000
Equality	3,986,000	Edgefield	25,000
Shawneetown	2,575,000	Nashville, Tenn.	29,790,000
Thackeray	3,696,900		
Enfield	10,979,540		
Carmi	9,822,000		
Hawthorn	1,470,000		
Wabash	16,000		
Mt. Vernon, Ind.	9,591,900		
Evansville	59,884,213		
	393,021,324		183,549,562

In addition to above we carried 273,392 tons of coal, making the total tonnage for the year 561,676. Of this there were carried—

On the St. Louis Division:

153,302 tons coal, @ $95,795.59, or 3,791,150 tons one mile, @ 2.53 cts. per ton per mile.
196 510 " fr'ght, 390,025 20, " 13,632,212 " " 2.86 " " "

On the Nashville Division:

120,090 tons coal, @ $122,741.46; or 5,995,700 tons one mile, @ 2.05 cts. per ton per mile.
91,774 " fr'ght, 218,762.70; " 7,950,076 " " " 2.75 " " "

191 *St. Louis & Southeastern Railway Co. (Consolidated).*

OFFICE GENERAL SUPERINTENDENT,
ST. LOUIS, MO., *September 1st*, 1874.

Edw'd F. Winslow, Esq., president and general manager St. Louis & Southeastern Railway Co., St. Louis, Mo.

DEAR SIR: I have the honor to submit to you herewith the following reports for the fiscal year ending July 31st, 1874, viz:

Entire line.

Rolling stock.
Rate of speed of trains.
Mileage of trains.
Mileage of cars.
Statement of cars hauled.
Side tracks and switches.

St. Louis Division.

Station buildings, water-tanks, round-houses.
Section-houses, and other buildings.
Length of main track.
Sidings and branches.

Nashville Division.

Station buildings, water-tanks, round-houses.
Section-houses and other buildings.
Length of main track.
Sidings and branches.

Few casualties have occurred during the operations of the year, without, however, resulting in the loss of life.

I desire to express my obligations to the heads of the different departments, and to the employes of the company generally, for their hearty co-operation in conducting the business and promoting the interests of the company.

Very respectfully, your ob'd't serv't,

A. E. SHRADER,
Gen'l Sup't.

192 *Rolling Stock—July 31st, 1874.*

St. Louis Division.	Nashville Division.
25 engines and tenders.	27 engines and tenders.
† 11 passenger cars.	† 12 passenger cars.
8 baggage, mail, and express cars.	4 baggage, mail, and express cars.
1 pay car (used on both divisions.)	12 caboose cars.
8 caboose cars.	14 stock cars.
48 stock cars.	303 coal and flat cars.
484 coal and flat cars.	154 box cars.
* 245 box cars.	24 hand cars.
38 hand cars.	26 push cars.
43 push cars	

* 100 of these are "Green Line" cars, and are used on both divisions of the road.

† Passenger car No. 7, St. Louis Division, and No. 30 of Nashville Division were destroyed by fire at Mt. Vernon shops May 27th, 1874.

193 *Rates of Speed of Trains.*

	Miles per hour.		
	St. Louis Div.	Nashville Div.	Average line.
Highest rate allowed express passenger trains	30.	30.	30.
Schedule rate allowed express passenger trains, including stops	22.17	19.13	20.65
Highest rate allowed mail and accommodation trains	30.	30.	30.
Schedule rate allowed mail and accommodation trains, including stops	20.1	17.36	18.73
Highest rate allowed freight trains	15.	15.	15.
Schedule rate allowed freight trains, including stops	10.9	11.57	11.23

194 *Mileage of Passenger, Freight, and Coal Trains for the Fiscal Year Ending July 31st, 1874.*

Month.	St. Louis Division.			Nashville Division.	
	Passenger Trains.	Freight Trains.	Coal Trains.	Passenger Trains.	Freight Trains.
August, 1873	18,420	18,221	1,664	11,822	21,982
September, "	18,032	19,367	1,664	15,188	22,876
October, "	18,676	18,587	1,776	13.157	21,500
November, "	17,710	17,185	1,754	9,403	21,013
December, "	18,676	17,652	1,678	11,719	24,486
January, 1874	18,676	20,653	1,723	12,316	23.083
February, "	16,914	17,317	1,578	14,102	19,844
March, "	18,486	19,364	1,664	16,129	12,596
April, "	18,193	18,942	1,664	11,151	16,601
May "	18,462	16,196	1,664	16,687	5,172
June, "	18,070	15,024	1,664	15,193	5,530
July, "	18,676	13,534	1,664	16,064	6,223
Totals	218,991	212,042	20,162	162,931	200,906

No switching or construction included above.
Construction mileage, 13,916.

ST. LOUIS DIVISION.

Months.	Foreign box cars.			Line cars.			Southeast'n box, st'k & flats.			Home and foreign coal.			Coaches, bag. c's.	Sleep'g cars.	Grand total.		
	Loaded.	Empty.	Total.	Loaded.	Empty.	Total.	Loaded.	Empty.	Total.	Loaded.	Empty.	Total.			Loaded.	Empty.	Total.
1873. August	26,752	18,025	44,777	5,270	3,232	8,502	77,305	49,261	126,566	29,680	17,551	47,231	63,164	10,380	212,551	88,069	300,620
Sept	27,027	23,747	50 774	3 772	3,968	7,740	158,405	61,423	219,828	28,826	33 314	62,140	49,789	8,991	276,810	122 452	399,262
Oct	26,669	19,626	46,295	3,976	4,690	8,666	118,611	32,123	150,734	39,248	30,426	69,674	52,061	7,986	248,551	86,865	335,416
Nov	23,318	17,066	40,384	6,812	7,919	14,731	99,145	25,999	125,144	27,898	20,953	48,851	41,576	8,041	206,790	71,937	278,727
Dec	15,991	9,261	25,252	5,880	3,213	9,093	99,088	39,125	138,213	21,290	21,532	42,811	52,636	10,058	204,932	73,131	278,063
1874. Jan	25,170	22,363	47,533	7,972	7,723	15,695	114,577	49,598	164,175	25,493	18,827	44,320	49,163	9,982	232,357	98,511	330,868
Feb	23,286	19,249	42,535	2,711	2,901	5,612	95,957	32,903	128,860	23,132	16,081	39,213	41,453	8,976	195,515	71,134	266,649
March	17,493	7,797	25,290	2,887	1,160	4,047	114,813	24,886	139,669	29,393	38,902	68,295	40,850	9,472	214 908	72,745	287,653
April	16,834	11,039	27,873	347	25	372	112,413	36,356	148,769	29,031	18,764	46.795	47,875	10,058	214,558	67,184	281,742
May	11,549	4,328	15,877	95	57	152	85,140	25,760	110,900	20,974	16,450	37,424	47,121	9,575	174,454	46,595	221,049
June	11,138	10,035	21,173	259	191	450	96,877	28,371	125,248	21.713	20,159	41,872	40,586	9,660	180,233	58,756	238,989
July	17,515	12,786	30,301	518	581	1,099	88,161	19,371	107,532	23,926	21,379	45,305	51,395	10,626	192,141	54,117	246,258
	242,742	175,322	418,064	40,499	35,660	76,159	1,260,492	425,176	1,685,668	318,593	275,338	593,931	577,669	113,805	2,553,800	911,496	3,465,296

NASHVILLE DIVISION.

1873. August	11,657	5,155	16,812	51,177	40,036	91,213	24,913	11,282	36,195	45,095	48,539	93,634	31,858	7,865	172,565	105,012	277,577
Sept	11,304	8,364	19,668	29,694	30,384	60,078	23,373	15,548	38,921	85,270	77,897	163,167	40,888	9,385	199,914	132,193	332,107
Oct	15,296	8,567	23,863	28,690	9,837	38,527	16,421	6,423	22,844	93,385	82,179	175,564	32,879	7,646	194,317	107,006	301,323
Nov	18,202	6,368	24,570	39,109	19,273	58,382	32,017	11,302	43,319	99,470	96,601	196,071	27,050	5,106	220,954	133,544	354,498
Dec	10,236	2,790	13,026	41,613	22,127	63,740	31,804	5,144	36,948	86,316	84,252	170,568	27,285	9,386	206,650	114,313	320,963
1874. Jan	15,251	13,224	28,475	75,732	61,122	136,854	45,429	10,111	55,540	73,429	62,344	135,773	28,537	8,410	246,788	146,801	393,589
Feb	27,344	13,497	40,841	73,648	45,858	119,506	33,496	8,922	42,418	55,043	49,777	104,820	38,425	7,973	235.929	118,054	353,983
March	18,744	6,433	25,177	49 873	24,273	74,146	26,589	8,713	35,302	44,777	49,478	94,255	40,100	8,288	188,371	88,897	277,268
April	14,468	9,686	24,154	67,797	42,375	110,172	31,853	12,733	44,586	52,142	37,888	90,030	26,968	8,270	201,498	102,682	304,180
May	9,539	3,000	12,539	32,586	8,162	40,748	23,285	26,228	49,513	37,833	37,398	75,231	42,852	8,384	154,479	74,888	229,267
June	9,969	2,727	12,696	27,048	5,275	32,323	20,373	3,806	24,179	29,129	23,116	52,245	40,235	8,382	135,136	34,924	170,060
July	8,414	2,961	11,375	29,545	6,700	36,245	28,320	10,376	38,696	32,057	27,497	59,554	41,239	8,917	148,492	47,534	196,026
	170,424	82,772	253,196	546,512	315,422	861,934	337,873	130,588	468,461	733,946	676,966	1,410,912	418,316	98,022	2,305,093	1,205,848	3,510,841

ST. LOUIS DIVISION.

		Passenger trains.			No. of freight trains.	No. box cars haul'd.		No. coal & fl'ts h'l'd.		Total freight cars hauled.	Av'ge cars to train.	
		Number run.	Cars hauled.	Average to train.		Loaded.	Empty.	Loaded.	Empty.		Loaded.	Empty.
1873.	August	119	424	3.56	439	2,148	1,196	1,400	1,244	5,988	8.10	5.55
	September	112	392	3.50	383	3,828	1,796	2,080	1,628	9,332	15.40	8.97
	October	116	421	3.63	369	2,828	1,288	2,028	1,628	7,772	13.10	7.90
	November	115	395	3.43	350	3,452	1,664	2,106	1,044	8,266	15.81	7.74
	December	126	442	3.50	260	1,404	912	808	736	3,866	8.50	6.34
1874.	January	116	387	3.34	293	3,153	2,056	1,032	1,084	7,325	14.30	10.72
	February	104	326	3.13	250	2,420	1,442	1,752	1,272	6,856	16.70	10.73
	March	120	420	3.50	270	4,804	1,192	1,532	1,696	9,224	23.47	10.72
	April	116	360	3.10	247	2,136	944	1,488	1,296	5,864	14.67	9.40
	May	115	371	3.23	230	1,404	680	1,072	1,428	4,584	10.76	9.20
	June	115	392	3.40	233	1,904	924	1,536	2,104	6,468	14.76	13.
	July	120	390	3.25	207	1,536	583	1,632	1,864	5,615	15.30	11.81
		1,394	4,720	3.39	3,531	31,017	14,647	18,466	17,024	81,154	14.01	8.97

NASHVILLE DIVISION.

1873.	August	88	296	3.36	316	1,164	464	780	1,014	3,412	6.15	4.67
	September	80	265	3.31	441	1,012	796	1,408	988	4,204	7.09	5.23
	October	104	320	3.08	312	724	328	1,272	1,460	3,784	6.40	5.73
	November	106	363	3.42	335	726	508	2,068	1,840	5,142	8.34	7.
	December	102	320	3.13	315	943	604	1,156	956	3,659	6.66	5.
1874.	January	112	336	3.	424	2,556	1,632	1,620	744	6,552	9.85	5.60
	February	104	342	3.29	293	2,144	516	1,264	652	4,576	11.60	3.90
	March	110	330	3.	236	1,936	812	824	716	4,288	11.70	6.47
	April	126	398	3.16	250	1,162	1,121	995	781	4,059	8.60	7.60
	May	115	355	3.07	195	2,373	861	1,890	1,589	6,713	21.86	12.50
	June	111	356	3.20	180	2,533	665	1,022	735	3,955	14.19	7.80
	July	120	376	3.13	210	2,106	982	1,011	829	4,928	14.84	8.60
		1,278	4,057	3.17	3,407	18,379	9,289	15,310	12,304	55,272	9.89	6.30

197 *Station Buildings on St. Louis Division, St. Louis & Southeastern Railway.*

Stations.	Passenger.	Freight.
East St. Louis	20 x 60 feet.*	24 x 250 feet.
French Village	16 x 16 " *	
Birkner's	16 x 32 "	
Belleville	20 x 60 " *	24 x 100 "
Rentchler's	18 x 40 "	
Mascoutah	20 x 60 "	
New Memphis	18 x 40 "	
Venedy	18 x 40 "	
Okawville	18 x 40 "	
Addieville	18 x 40 "	
Nashville, Ill.	20 x 60 " *	24 x 80 "
Ashley	24 x 120 "	
Woodlawn	16 x 16 "	
Mt. Vernon, Ill.	20 x 60 "	
Opdyke	18 x 40 "	
Belle Rive	18 x 40 "	
Dahlgren	18 x 40 "	
Delafield	18 x 18 "	
McLeansboro	20 x 60 "	
Hoodville	16 x 36 "	
Broughton	16 x 16 "	
Eldorado	20 x 40 "	(C. & V., jointly.)
Equality	20 x 60 "	
Shawneetown	20 x 60 "	
McLeansboro Junction	10 x 12 " *	
Thackeray	16 x 36 "	
Enfield	18 x 40 "	
Carmi	40 x 60 "	
Mt. Vernon, Ind.	24 x 120 "	
Evansville	25[4] x 51 "	* Brick, 32 x 178 feet.
"		Frame, 32 x 83 "

198 *Water Tanks.*

St. Louis Division.

Location.	No.	Capacity.
East St. Louis	1	26,000 gallons.
Belleville	1	26,000 "
Queen's Lake	1	26,000 "
Nashville, Ill.	1	26,000 "
Ashley	1	9,500 "
Mt. Vernon, Ill.	1	9,500 "
" " shops	1	59,500 "
Belle Rive	1	8,000 "
McLeansboro'	1	26,000 "

Those not marked with a * are used for both passengers and freights.

Location.	No.	Capacity.
Equality	1	26,000 gallons.
Enfield	1	26,000 "
Carmi	1	26,000 "
Upton	1	26,000 "
Mt. Vernon, Ind.	1	8,000 "
	14	328,500 gallons.

Round-Houses.

St. Louis Division.

East St. Louis	Brick, 5 stalls.
Mt. Vernon, Ill.	Wood, 8 "
McLeansboro'	Brick, 4 "
Equality	Wood, 1 "
Shawneetown	Brick, 4 "
Evansville	" 5 "

Section-Houses.

St. Louis Division.

French Village	16 x 32 feet, with "L."
New Memphis	16 x 32 " "
Woodlawn	(2 stories) 18 x 36 "
Belle Rive	16 x 32 " "

199 *Section Tool-Houses.*

St. Louis Division.

East St. Louis	Single house,	12 x 16 feet.
Belleville	Double "	16 x 16 "
Mascoutah	" "	16 x 16 "
McLeansboro'	" "	16 x 16 "
Shawneetown	" "	16 x 12 "
Enfield	" "	16 x 16 "
Carmi	" "	10 x 16 "
Mt. Vernon, Ind.	" "	16 x 16 "
Evansville	" "	12^6 x 18^6 "

Other Buildings.

St. Louis Division.

Mt. Vernon, Ill.,	machine and erecting shops	Brick, 240 x 60 feet.
Mt. Vernon, "	carpenter shop	" 83 x 64 "
Mt. Vernon, "	paint shop	Wood, 130 x 26 "
Mt. Vernon, "	" " " "L"	" 30 x 20 "
Mt. Vernon, "	blacksmith shop	Brick, 60 x 56 "
East St. Louis, "	" "	Wood, 76 x 30 "
Belleville, "	engine-room	16 feet diameter.
Queen's Lake, "	boiler-room	19 " "
Queen's Lake, "	pump-house	10 x 14 feet.
Queen's Lake, "	pumper's house	16 x 32 feet.

Mt. Vernon,	Ill., engine-room	14 feet diameter.
Mt. Vernon,	" oil-room under water-tank.	
Mt. Vernon,	" engine-room	25 x 33 feet.
Carmi,	" engine-room	12 x 33 "
East St. Louis,	" oil-room under water-tank.	
Mt. Vernon,	" sand-house	Wood, 14 x 16 feet.
East St. Louis,	" sand-house	" 14 x 16 "
Evansville, Ind.,	carpenter & blacksmith shops	Brick, 37 x 68 feet.
Evansville,	" oil-room	" 30 x 50 "
Evansville,	" telegraph & paymaster's offices	" 32 x 33 "
Evansville,	" sand-house	" 19 x 19[6] "

Dwelling-Houses.

St. Louis Division.

East St. Louis	1 brick.	1 wood.
Mt. Vernon, Ill.		2 "
Evansville	1 "	
Belleville, Ill.	1 "	

200 *Length of Main Track.*

St. Louis Division.

St. Clair county, Illinois, "Main line"	9.9 miles.
Clinton " " "	3.9 "
Washington " " "	28.5 "
Jefferson " " "	26.8 "
Hamilton " " "	21.6 "
White " " "	21.6 "
Posey county, Indiana, "	20.9 "
Vanderburg " " "	7.6 "
Hamilton county, Illinois, "Shawneetown Branch"	15.2 "
Saline " " " "	12.7 "
Gallatin " " " "	13.6 "
St. Clair " " "O'Fallon Branch"	6.0 "
	208.3 miles
Main track in Illinois	179.8 miles.
Main track in Indiana	28.5 "
	208.3 miles.

Sidings and Branches.

St. Louis Division.

County.	Length in feet.
St. Clair	43,499
Clinton	3,495
Washington	9,147
Jefferson	16,771
Hamilton	8,160
Saline	8,709
Gallatin	3,432

County.	Length in feet.
White	8,004
Posey	3,389
Vanderburg	13,250
Total length in feet	117,756
Total length in miles	22.3

201 *Station Buildings on Nashville Division St. Louis & Southeastern Railway.*

	Passenger.	Freight.
Henderson, Ky.	*23 x 54 feet.	Wood, 40 x 155 feet.
Henderson, Ky. (tobacco)		" 40 x 200 "
Sebree, "	30 x 60 "	"
Slaughter's, "	20 x 56 "	"
Hanson, "	30 x 60 "	"
Madisonville, "	25 x 60 "	"
Earlington, "	20 x 66 "	"
Morton's "	20 x 50 "	"
Petersburg, "	20 x 50 "	"
Crofton, "	20 x 50 "	"
Hopkinsville, "	18 x 160 "	"
Casky, "	20 x 30 "	"
Pembroke, "	33 x 61 "	Brick.
Trenton, "	20 x 60 "	Wood.
Fort's, Tenn.	20 x 22 "	"
Adams, "	30 x 60 "	Brick.
Cedar Hill, "	27 x 62 "	"
Springfield, "	30 x 150 "	"
Greenbrier "	20 x 60 "	"
Oakland, "	14 x 24 "	Wood.
Goodlettsville, "	30 x 40 "	"
Nashville, "	*24 x 33 "	" 27 x 93 feet.

Water Tanks.

Nashville Division.

	No.	Capacity.
Henderson, Ky.	1	6,700 gallons.
Henderson, Ky.	1	8,400 "
Deer Creek	1	26,000 "
Madisonville	1	6,700 "
Earlington	1	26,000 "
Petersburg	1	26,000 "
Hopkinsville	1	26,000 "
West Fork	1	26,000 "
Sadler's	1	6,000 "
Adams	1	6,200 "
Sulphur Fork	1	26,000 "
Baker's	1	26,000 "
	12	216,000 gallons.

* Those not marked with a * are used for both passengers and freights.

202 *Round-Houses.*

Nasheville Division.

Henderson, wood	4	stalls, 65 x 100	feet deep.
Earlington, "	3	" 60	"
Edgefield, brick	6	" 60	"
Baker's, wood	1	" 16 x 55	"

Section-Houses.

Nashville Division.

Henderson	15 x 22 feet.
Henderson	16 x 50 "
Busby's	20 x 40 "
Sebree City	25 x 50 "

Section Tool-Houses.

Nashville Division.

Henderson	16 x 19 feet.
Henderson	14 x 21 "

Other Buildings.

Nashville Division.

Henderson, car hoist	34 x 85 feet.
Henderson, repair shops	40 x 105 "
Henderson, work shops	50 x 100 "
Henderson, engine and boiler room	20 x 30 "
Henderson, " "	12 x 12 "
Henderson, blacksmith shops	40 x 40 "
Deer creek, engine room	16 x 20 "
Earlington, repair shops	40 x 105 "
Earlington, blacksmith shops	20 x 35 "
Earlington, sand-house	12 x 20 "
Petersburg, engine-room	20 x 20 "
Hopkinsville, engine-room	16 x 16 "
West Fork, engine-room	16 x 16 "
Edgefield, repair shops	50 x 100 "
Edgefield, blacksmith shops	30 x 50 "
Edgefield, office	13 x 13 "

203 *Length of Main Track.*

Nashville Division.

Henderson county, Kentucky		14.43 miles.
Webster " "		12.17 "
Hopkins " "		27.90 "
Christian " "		31.88 "
Todd " "		11.72 "
Robinson " Tennessee		28.25 "
Davidson " "		8.85 "
Davidson " "	joint track	9.80 "
		145.00 miles.

Main track in Kentucky	98.10 miles.
Main track in Tennessee	46.90 "
	145.00 miles.

Sidings and Branches.

Nashville Division.

Henderson	county,	Kentucky,	at Henderson	12,848 feet.
"	"	"	" Randolph	982 "
"	"	"	" Robard's	450 "
Webster	county,	Kentucky,	at Sebree	1,170 "
"	"	"	" Slaughter's	500 "
Hopkins	county,	Kentucky,	at Hanson	950 "
"	"	"	" Madisonville	1,120 "
"	"	"	" Earlington	16,741 "
"	"	"	" Morton's	1,216 "
"	"	"	" South Diamond	1,325 "
"	"	"	" Nortonville	825Y "
"	"	"	" "	500 "
"	"	"	" Petersburg	1,150 "
Christian	county,	Kentucky,	at Petersburg Hill	340 "
"	"	"	" Crofton	1,180 "
"	"	"	" Kelley's	1,030 "
"	"	"	" Hopkinsville	3,683 "
"	"	"	" Casky	780 "
"	"	"	" Pembroke	1,184 "
204 Todd	county,	Kentucky,	at Trenton	1,120 feet.
"	"	"	Guthrie	980 "
"	"	"	"	2,248 "
Robertson	county,	Tennessee,	at Sadler's 3 Y's	360 "
"	"	"	Fort's	812 "
"	"	"	Adams	800 "
"	"	"	Cedar Hill	700 "
"	"	"	Springfield	1,285 "
"	"	"	Greenbrier	960 "
"	"	"	Winslow	400 "
"	"	"	Oakland	1,050 "
Davidson	county,	Tennessee,	at Baker's	1,337 "
"	"	"	Goodlet's	787 "
"	"	"	Edgefield	6,300 "
"	"	"	Nashville, Tenn.	933 "
				68,041 feet.
				or 12.88 miles.

Side Tracks and Switches.

	Feet.	
On the St. Louis Division	117,756	—22.30 miles.
On the Nashville Division	68,041	—12.88 miles.
Total line	185,797	—35.18 miles.

Additions made during the year.

	Feet.
On the St. Louis Division	10,475—1.984 miles.
On the Nashville Division	7,888—1.494 miles.
Total additions	18,363—3.478 miles.

204½ And then petitioner read in evidence the following report:

205 "C."

7. *The First Annual Report of the Receiver of the St. Louis Division of the St. Louis & Southeastern Railway (Consolidated), for the Fiscal Year Ending October 31st, 1875.*

206 St. Louis and Southeastern Railway (Consolidated).

ST. LOUIS DIVISION,
ST. LOUIS, *November* 15, 1875.

Hon. Geo. Opdyke and Philo C. Calhoun, trustees.

GENTLEMEN: I have the honor to submit to you and through you to the bondholders a report of the operation of this division (comprising the road in Illinois and Indiana) of the St. Louis & Southearstern railway (consolidated) for the year ending October 31st, 1875.

I took posssesion of the road on the first day of November, 1874, as receiver, appointed by the United States circuit courts of Illinois and Indiana, and have since operated it in connection with those parts of the same road in Kentucky and Tennessee—the whole being operated as a through line between St. Louis and Nashville, as ordered by the courts.

The annexed statements, furnished by the auditor, include the other two divisions, and the totals for the whole consolidated road, for the purpose of comparison with former years, as well as each division with the others. But, in speaking of the road in this report, the St. Louis Division only is alluded to, except where other parts or the whole road are specially mentioned.

By reference to these statements it will be seen that the total earnings for the year were $616,985.41, and that the operating expenses amounted to $456,961.04, leaving $160,024.37 as net earnings. This shows quite a decrease in earnings as compared with previous years, but this year was one of remarkably light traffic among Western railroads generally, and particularly so for the Southeastern. The causes for this were various: the general financial depression in this country and the consequent universal prostation of business naturally affected transportation companies very seriously. The
207 general failure of all staple crops, except that of wheat, on the line of this railway in 1874 reduced the local business during this year very much, while the intense cold weather of last winter blocked up the Ohio river for nearly seven weeks, so as to effectually prevent the crossing of freights or passengers. The unprecedent high waters of the spring and summer seriously interrupted traffic

and greatly increased expenses. But the most serious obstacle this road had to encounter was the rivalry of other roads in doing through business to and from points beyond Nashville. By a combination of the competing lines this road was prohibited from doing any of this business, except at ruinous rates, during the whole of this year up to the latter part of September. This combination was between the Louisville & Nashville railway and the Nashville & Chattanooga railway, each road being interested in lines both north and south of Nashville. They therefore undertook to force all freights from points north of the Ohio river and west of the Mississippi, destined for points south of Nashville, to be carried also over their lines north of Nashville instead of allowing them to choose the most direct route (the Southeastern), and receiving it from them at Nashville, as they were sure to do, there being no other roads thence south. By charging their local rates south of Nashville on all freights delivered to them at that point by the Southeastern they made it impossible for it to take any such freights.

Frequent efforts were made to come to some amicable arrangement of this difficulty which would restore to our road a fair proportion of this through business, but all without success, and last summer, thinking nothing else would answer the purpose, a railroad war was commenced, in which rates were cut to the lowest possible figures. This continued until the latter part of September, when a settlement was effected, by which this road obtained the privilege of doing through business derived from a considerable portion of territory. It has not yet, however, been fully restored to its rights, but is doing a much better business than while the embargo lasted.

The above-mentioned difficulties have been met and partially overcome by the most rigid economy in every department. While the gross earnings show a material falling off it will also be seen that the operating expenses were very much reduced, being about $46,000 less than for the year before. But all railroad men know that it is impossible, with a falling off in business, to reduce the current expenses in proportion to the reduction in gross earnings. It was also thought advisable and for the best interest of the bondholders
208 as well as other parties interested that the road should be maintained in good condition, which has been done. It has also been necessary to make large improvements upon our grounds in East St. Louis. For five years previous to August last the road has had a lease of grounds belonging to the Ohio & Mississippi railway, upon which its business was done, and for which it paid a yearly rental of $9,600; but as the lease expired on the 1st of last August, and could not be renewed, it was necessary that the ground heretofore purchased by the Southeastern should be improved so that business could be done there. The expenditures for this and some other necessary improvements during the year amounted to $45,732.55. Similar expenditures will not be required again for years to come, while the above expense for rent of grounds will hereafter be saved.

The order of court appointing me receiver authorized me to pay out of net earnings certain claims against the company for liens on real estate, engines and cars, labor, materials, supplies, certificates of

indebtedness issued for labor, balances due other railroads, and overdrafts at bank, in all amounting to $389,839.54, as scheduled by the auditor. During the year $102,512.84 has been paid on these claims. The balance unpaid could probably all be settled within the next year if the whole of the net earnings could be used for that purpose, but in view of the fact that the first-mortgage bondholders, who have not received anything on their past-due interest, will probably insist on having a portion of the net earnings after January 1st, 1876, set apart for their benefit, leaving the remainder for taxes, necessary improvements, and the liquidation of these claims, it will take a much longer time to pay them off. It is thought, however, that most of them can be compromised and settled at a considerable discount. In fact, I have already arranged with the holders of about $56,000 of this indebtedness, secured by lien on cars, to surrender it at twenty per cent. discount if paid during the coming year. Other claims not so well secured can be bought up at much heavier discount, and probably these claims can all be disposed of within the next two years.

Since the settlement of our difficulties with other roads the traffic is much better. It will be seen that the increase in gross earnings in October over that in September was about $16,000, and it is hoped that the good results of this settlement will be shown by a largely increased business during the coming year.

The country through which this road runs was compara-
209 tively new and undeveloped when the road was constructed, since which time it has been gradually improving and increasing in population, agriculture, and manufactures, and will naturally continue to improve every year until the local business will eventually become sufficient to maintain the road and pay interest on its whole indebtedness. How long it will take to bring about this desirable result it is, of course, impossible to predict. That depends very much upon the general prosperity of the country. If times continue hard and business dull it will be much longer than if we should have a revival of good times; but it is believed that the time will not be long before the road will be able at least to pay current interest on its first-mortgage bonds.

There is good reason to believe that within the next two or three years there will be a line of railway finished between Evansville and Louisville, in which case the business on your road will be largely increased, and that without any heavy additional expense, thus making the net earnings very much better than they can be without it. More than three millions of dollars have already been expended on this line, and a contract has lately been made for completing it from Evansville in an easterly direction about fifty miles to a place called Huntingburg by next September. Between that point and Louisville the road is nearly all graded and tunneled, and will cost but little to complete. Efforts are now being made to put it in such shape that work can be commenced on it next year. The speedy completion of this line would hasten the time when the interest on your first-mortgage bonds can be fully paid as it matures.

(It is perhaps only proper that I should here state that the consolidation in 1872 of your road with those roads in Kentucky and Tennessee, now described as the Kentucky and Tennessee Divisions, brought to your road a large addition to its equipment, paid for by the proceeds of the sale of consolidated bonds, and has also brought a large increase of through freight and passenger travel, resulting from a harmonious working and co-operation). An examination has shown that one-fourth of the whole passenger receipts during twelve months upon your road was derived from business going to or coming from the other divisions, and that about one-fourth of the whole freight income during one month was derived from the same source. As this additional business cost very little additional expense to carry, of course the net gain was much larger. Without
the union of interests secured by the consolidation much of
210 this business would have been uncertain; it might even all
have been lost by a connection of the other divisions with rival lines.

In conclusion, I would say that the amount due on the balance-sheet for "unpaid vouchers and pay-rolls" arises chiefly from the custom among railroads of paying such expenses for every month during the following month. In fact, it cannot well be done otherwise—certainly not earlier.

I will also mention the fact that portions of the old claims paid during the year were settled by allowing charges on freights which could not otherwise have been obtained to be applied in that way, and that frequent opportunities will, doubtless, hereafter occur when those still unpaid may be settled in the same manner. Various parties will give us their traffic in this way, when, if they had to pay cash in full, it would be to their interest to give it to a rival line.

I estimate the net earnings for the year 1876 at about $240,000. This is based upon the fair crops of this year, our late restoration to a share in through traffic, and the continuance of the running of the road as part of a through line to Nashville.

All of which is respectfully submitted.

J. F. ALEXANDER, *Receiver.*

211 *St. Louis and Southeastern Railway (Consolidated).*

ST. LOUIS, *December 8th*, 1875.

To the receivers of the St. Louis and Southeastern railway.

GENTLEMEN: Herewith I beg to hand you the following statements, compiled from the official records of this office, showing the result of operation for the fiscal year ending October 31st, 1875:

General balance-sheets.

Appendices Nos. 1 to 9, inclusive.

Very respectfully, JOHN P. HAINS, *Auditor.*

General balance-sheet for one year ending 31st October, 1875.

Accounts Dr.			Accounts Cr.		
Improvements and additional equipment:			Revenue account:		
Amount expended as per Appendix No. 1		$45,732 55	Gross earnings for twelve months ending at date	$616,985 41	
Taxes:			Deduct operating expenses	456,961 04	
Amount paid for 1874 taxes		7,066 02	Net revenue		$160,024 37
Interest account:			Sundry liabilities:		
Interest paid on liens on real estate, one year		4,387 14	Bills payable	1,294 80	
Sundries:			Unpaid vouchers and pay-rolls	55,551 99	
Amounts paid on account expenses of appointment of receiver	$1,670 75		Unpaid meal tickets	19 67	
Amount paid on account expenses of funding propositions	94 50				56,866 46
		1,765 25	St. John Boyle, receiver in Kentucky:		
St. Louis & Southeastern Railway Co.:			Amount due to him	15,509 22	
Amounts paid on account of old indebtedness of the company, as authorized by the court—see details, as per Appendix No. 2	102,512 84				
Deduct value of materials received from railway company by the receiver	10,280 57				
		92,232 27			
Sundry assets:					
Amounts due from sundry individuals and corporations, as per detailed Appendix No. 3	12,140 35				
Balances due from agents and the United States Government	9,692 32				
Material on hand in machinery department	6,352 58				
J. F. Alexander, receiver; cash on hand 31st October, 1875	23,012 45				
		51,197 70			
J. F. Alexander, receiver in Tennessee:					
Amount at his debit and to be refunded by the Tennessee section		30,019 12			
		$232,400 05			$232,400 05

General balance-sheet for one year ending 31st October, 1875.

Accounts Dr.			Accounts Cr.		
Improvements and additional equipment:			Revenue account:		
Amount expended as per Appendix No. 1		$7,996 71	Gross earnings for twelve months ending at date	$280,305 14	
St. Louis and Southeastern Railway Co.:			Deduct operating expenses	279,601 17	
Amounts paid on account of old indebtedness of the company, as authorized by the court—see details, per Appendix No. 2	$10,199 60		Net revenue		$703 97
Deduct value of materials received from railway company by the receiver	3,951 69		Sundry liabilities:		
		6,247 91	Bills payable	$18,854 03	
E. Head. and N. R. R. coupons:			Unpaid vouchers and pay-rolls	31,070 50	
Paid on account of coupons of first-mortgage bonds	8,015 00		Unpaid meal tickets	9 48	
Paid interest accrued on the same	340 68				49,934 91
		8,355 68			
Sundry assets:					
Amounts due from sundry individuals and corporations, as per detailed Appendix No. 3	414 10				
Balances due from agents and the U. S. Government	6,834 33				
Materials on hand in machinery department	3,270 57				
St. John Boyle, receiver; cash on hand 31st October, 1875	2,010 36				
		12,529 36			
J. F. Alexander, receiver in Illinois and Ind.:					
Amount due from him		15,509 22			
		$50,638 88			$50,638 88

General balance-sheet for one year ending 31st October, 1875.

ACCOUNTS DR.			ACCOUNTS CR.		
Revenue account:			Sundry liabilities:		
For loss on operation of the road for twelve months ending at date:			Amount of receiver's certificates of indebtedness authorized and executed	$250,000 00	
Gross earnings	$121,787 21		Bills payable	376 63	
Operating expenses	131,342 39		Unpaid vouchers and pay-rolls	13,305 41	
		$9,555 18	Unpaid meal tickets	4 35	
Improvements and additional equipment:			Overdue and unpaid coupons of certificates of indebtedness	450 00	
Amount expended as per Appendix No. 1		191 50	Accrued interest to date on certificates of indebtedness, 5 months to date (part of December 1 coupons)	10,000 00	
Interest account:					$274,136 39
Coupons of certificates of indebtedness, due 1st June, 1875	12,000 00		J. F. Alexander, receiver in Ill. and Ind.:		
Proportion accrued to date of coupons of 1st December, 1875	10,000 00		Amount due to him		30,019 12
		22,000 00			
Discount on $240,000 certificates of indebtedness sold and issued		47,051 12			
St. Louis & Southeastern Railway Co.:					
Amounts paid on account of old indebtedness of the company, as authorized by the court—see details as per Appendix No. 2	211,923 03				
Deduct value of materials received from the railway company by the receiver	1,859 61				
		210,063 42			
Sundry assets:					
Amounts due from sundry individuals and corporations, as per detailed Appendix No. 3	54 78				
Balances due from agents and the United States Government	4,100 28				
Material on hand in machinery department	1,139 23				
Unsold certificates of indebtedness	10,000 00				
		15,294 29			
		$304,155 51			$304,155 51

215 APPENDIX No. 1.

Statement of Expenditures for Improvements, &c., During the Fiscal Year Ending October 31st, 1875.

	St. Louis Division.	Ky. Division.	Tenn. Division.	Total.
New yard at East St. Louis	$35,202 28			$35,202 28
New depot at East St. Louis	4,657 33			4,657 33
Rebuilding Mount Vernon shops	1,191 88			1,191 88
New sidings	333 15	143 35		476 50
New track scales at Carmi	19 23			19 23
New water-tanks	152 39			152 39
New ice-house at Mount Vernon, Ills.	17 22			17 22
Steel rails	3,557 19	5,489 00		9,046 19
New coal cars	136 15	157 63	74 17	367 95
New passenger cars	141 99			141 99
New hand cars	36 05			36 05
New caboose cars		249 35	117 33	366 68
Fitting up boarding car	26 65			26 65
New fencing	68 06			68 06
New pile-driver	87 13			87 13
Relay depot, East St. Louis	278 20			278 20
Right of way	9 65			9 65
Henderson shops		1,351 05		1,351 05
Superintendent's office—Henderson		422 94		422 94
Section-houses		109 30		109 30
Turn-table		74 09		74 09
	45,914 55	7,996 71	191 50	54,102 76
Deduct subscription for rebuilding Mount Vernon shops	182 00			182 00
	$45,732 55	$7,996 71	$191 50	$53,920 76

216 APPENDIX No. 2.

Payments Made by the Receivers on Account of Indebtedness of the St. Louis and Southeastern Railway Company During the Fiscal Year Ending October 31st, 1875.

	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Liens on locomotives	$30,371 38	$2,465 95	$1,133 97	$33,971 30
Liens on freight cars	11,842 51			11,842 51
Certificates of indebtedness	1,933 59			1,933 59
Balances due other railroads	11,941 26	7,554 71	3,474 06	22,970 03
Overcharge claims	1,592 14			1,592 14
Judgments account, stock killed	1,621 52			1,621 52
Taxes	3,213 85			3,213 85
General railway supplies	8,461 44			8,461 44
Rent of depot grounds	4,062 50			4,062 50
Interest on lien notes, &c.	2,732 05	178 94	82 28	2,993 27
Labor	2,080 36			2,080 36
Rent of cars	6,780 35			6,780 35
Advertising	64 50			64 50
Transferring mail at Henderson	1,170 00			1,170 00
Rent of offices	18 75			18 75
Legal expenses	30 00			30 00
Track scales at Carmi, Ills.	356 25			356 25
Right of way at Mount Vernon, Ind.	630 04			630 04
Loss and damage to freight	143 16			142 16
Bar iron and steel	993 28			993 28
Car wheels	605 96			605 96
Oils, grease, and tallow	2,042 51			2,042 51
Lumber	3,267 27			3,267 27
Coal	6,558 17			6,558 17
Lien of the State of Tennessee			207,232 72	207,232 72
	$102,512 84	$10,199 60	$211,923 03	$324,635 47
Deduct value of materials received from the railway company	10,280 57	3,951 69	1,859 61	16,091 87
	$92,232 27	$6,247 91	$210,063 42	$308,543 60

217 APPENDIX No. 3.

Statement of Amounts Due from Sundry Individuals and Corporations October 31st, 1875.

	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Ohio & Mississippi Railway Co.	$15 12			$15 12
The Union Railway & Transit Co.	272 06			272 06
The Evansville & Crawfordsville Railroad Co.	3,384 74	$39 75	$12 19	3,436 68
The United States Government			10 85	10 85
The Cairo & Vincennes railroad	653 14			653 14
Winslow & Wilson	225 90			225 90
The St. Louis Bolt & Iron Co.	628 24			628 24
M. M. Buck & Co.	883 82			883 82
The St. Louis Car Wheel Co.	2,307 42			2,307 42
E. L. Abbett	12 50			12 50
The East St. Louis Transfer Co.	2 75			2 75
The Louisville, Paducah & Southwestern R. R.	6 00	158 35	7 99	172 34
The Louisville & Nashville R. R. Co.	2 29	141 00		143 29
The Illinois Central Railroad Company.	15 71			15 71
J. D. Hays	1 00			1 00
Conductor Haley			20 00	20 00
Durland & Perkins	54 03			54 03
James Tolle	60 75			60 75
James Ware			1 88	1 88
L. Cartwright			1 87	1 87
Patrick Slane	55 00			55 00
A. Gunnison & Co.	40 50			40 50
St. Bernard Coal Co.		75 00		75 00
Scath & Hager	255 10			255 10
Wood & Rees	130 00			130 00
Murray & Hatch	258 00			258 00
Pullman Palace Car Co.	316 70			316 70
The Illinois & St. Louis Bridge Co.	215 86			215 86
The Equality Coal Co.	674 48			674 48
John H. Wilson	26 65			26 65
A. McDonald & Bro.	1,580 59			1,580 59
E. Maxwell & Co.	62 00			62 00
	$12,140 35	$414 10	$54 78	$12,609 23

Earnings and Operating Expenses for the Fiscal Year Ending October 31st, 1875.

Month.	Earnings.				Operating expenses.				Net earnings.			
	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
1874.												
November	$58,341 80	$30,763 29	$13,503 15	$102,608 24	$35,498 85	$20,489 10	$9,756 78	$65,738 73	$22,842 95	$10,274 19	$3,752 37	$36,869 51
December	58,826 82	30,264 47	13,820 47	102,911 76	48,528 07	28,147 26	14,754 36	91,429 69	10,298 75	2,117 21	Loss 933 89	11,482 07
1875.												
January	50,493 18	22,942 49	11,100 78	84,536 45	38,038 56	21,407 57	11,640 73	71,086 86	12,454 62	1,534 92	Loss 539 95	13,449 59
February	48,140 24	22,591 73	9,355 45	80,087 42	35,893 35	24,014 71	9,555 64	69,463 70	12,246 89	Loss 1,422 98	Loss 200 19	10,623 72
March	55,651 98	23,795 47	10,452 91	89,900 36	42,370 19	24,456 86	14,280 13	81,107 18	13,281 79	Loss 661 39	Loss 3,827 22	8,793 18
April	52,737 13	22,381 45	10,816 91	85,935 49	42,666 16	23,896 54	10,244 09	76,806 79	10,070 97	Loss 1,515 09	Loss 572 82	9,128 70
May	46,566 09	18 217 50	8,940 83	73,724 42	36,720 12	24,103 03	11,357 96	72,181 11	9,845 97	Loss 5,885 53	Loss 2,417 13	1,543 31
June	42,353 79	16,897 86	5,831 24	65,082 89	34,511 04	21,404 82	9,086 61	65,002 47	7,842 75	Loss 4,506 96	Loss 3,255 37	80 42
July	41,810 93	19,793 80	5,540 46	67,145 19	34,551 64	20,188 94	11,552 22	66,292 80	7,259 29	Loss 395 14	Loss 6,011 76	852 39
August	43,918 68	20,375 83	9,318 81	73,613 32	36,293 66	18,332 40	9,553 10	64,179 16	7,625 02	2,043 43	Loss 234 29	9,434 16
September	54,305 60	23,712 30	10,658 44	88,676 34	34,566 55	21,994 18	10,212 59	66,773 32	19,739 05	1,718 12	445 85	21,903 02
October	63,839 17	28,568 95	12,447 76	104,855 88	37,322 85	31,165 76	9,354 18	77,842 79	26,516 32	Loss 2,596 81	3,093 58	27,013 09
	$616,985 41	$280,305 14	$121,787 21	1,019,077 76	$456,961 04	$279,601 17	$131,342 39	$867,904 60	$160,024 37	$703 97	Loss $9,555 18	$151,173 16

219 APPENDIX No. 5.

Statement of Operating Expenses in Detail for the Fiscal Year Ending October 31st, 1875.

Conducting transport'n—Passenger department.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Advertising	$1,179 22	$593 62	$310 52	$2,083 36
Agencies, passenger	9,879 68	2,885 12	1,448 62	14,213 42
Agencies, foreign	1,458 61	837 41	402 47	2,698 49
Cars, cleaning and inspecting	2,480 19	605 38	283 08	3,368 65
Cars, fuel and lights for	1,041 41	226 36	106 45	1,374 22
Cars, hire of	994 92	231 64	108 14	1,334 70
Cars, oil and waste for	723 11	356 67	158 19	1,237 97
Clerks	1,214 45	687 70	576 67	2,478 82
Conductors, baggagemen, and brakemen	8,649 27	5,854 63	2,734 58	17,238 48
Stock killed	1,484 87	12 50	-----	1,497 37
Injury to persons	-----	21 20	-----	21 20
Mail expenses	899 36	546 53	-----	1,445 89
Printing and stationery	3,992 09	1,963 07	937 41	6,892 57
Stations, expenses of	631 59	449 26	293 25	1,374 10
Stations, repairs of	145 31	270 48	357 02	772 81
Stations, fuel and lights for	312 16	172 48	86 17	570 81
Stations, labor at	2,656 23	650 40	611 48	3,918 11
Superintendence	819 20	327 80	148 77	1,295 77
Telegraph, expenses of	1,920 45	1,176 53	581 77	3,678 75
Transfer at Ohio river	1,562 93	1,195 27	551 27	3,309 47
Train expenses	1,425 22	178 01	47 03	1,650 26
Rent of buildings and depot grounds	2,503 76	-----	1,339 53	3,843 29
	45,974 03	19,242 06	11,082 42	76,298 51

Conducting transport'n—Freight department.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Advertising	$152 82	$72 93	$34 56	$260 31
Agencies, freight	10,279 63	5,838 48	3,286 50	19,404 61
Agencies, foreign	408 77	730 31	106 08	1,245 16
Cars, cleaning and inspecting	826 86	560 18	42 71	1,429 75
Cars, fuel and lights for	88 01	239 10	93 87	420 98
Cars, hire of	23,502 74	1,893 40	655 72	26,051 86
Cars, oil and waste for	1,103 72	590 08	277 59	1,971 39
Clerks	11,301 42	3,295 29	2,802 58	17,399 29
Conductors and brakemen	15,811 53	8,781 35	3,998 97	28,591 85
Yardmen and switchmen	10,420 23	5,338 10	3,097 00	18,855 33
Stock killed	1,072 78	106 75	135 00	1,314 53
Loss and damage to freight	464 52	525 11	359 55	1,349 18
Injury to persons	339 20	1,592 23	67 02	1,998 45
Printing and stationery	4,106 03	1,863 26	884 69	6,853 98
Stations, expenses of	790 24	265 17	232 35	1,287 76
Stations, repairs of	2,327 92	375 25	612 26	3,315 43
Stations, fuel and lights for	428 51	223 24	180 14	831 89
Stations, labor at	9,745 03	5,098 16	3,008 87	17,852 06
Superintendence	1,092 30	1,101 75	590 30	2,784 35
Telegraph, expenses of	7,675 99	4,528 53	2,271 18	14,475 70
Transfer at Ohio river	2,124 12	654 63	294 13	3,072 88
Train expenses	1,769 18	758 11	271 98	2,799 27
Rent of buildings and depot grounds	5,978 65	-----	1,010 16	6,988 81
Watchmen	1,304 12	690 00	97 75	2,091 87
	113,114 32	45,121 41	24,410 96	182,646 69

Maintenance of way.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Ballast and surfacing	$550 26	$821 55	$312 80	$1,684 61
Bridges, repairs of	12,188 45	14,144 37	10,119 51	36,452 33
Cross-ties	2,802 40	11,152 67	2,059 20	16,014 27
Frogs	1,372 08	914 10	384 76	2,670 94
Crossings, road	557 40	87 00	26 00	670 40
Houses, section and watch, repairs of	25 60	92 07	40 00	157 67
Hand cars, repairs of	727 57	343 57	57 75	1,128 89
Push cars, repairs of	113 05	195 46	29 40	337 91
Rails	18,429 18	18,500 19	1,256 07	38,185 44
Oil, fluid, and tallow	27 45	14 77	2 36	44 58
Spikes	706 36	1,079 95	445 45	2,231 76
Splices and bolts	779 13	255 44	146 35	1,180 92
Superintendence	1,735 91	1,011 46	491 43	3,238 80
Switches	1,807 66	602 58	141 73	2,551 97
Clerks	333 00	383 71	178 69	895 40
Tools and repairs of	1,354 68	1,719 36	669 71	3,743 75
Telegraph, repairs of	102 88	38 54	9 56	150 98
Track repairs	58,282 18	41,812 29	18,585 21	121,679 68
Watchmen	1,904 70	----------	1,057 90	2,962 60
Wabash flood, repairs	4,712 85	----------	----------	4,712 85
	108,512 79	96,169 08	36,013 88	240,695 75

Motive power.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Passenger engineers and firemen	$10,548 19	$7,052 45	$3,296 74	$20,897 38
Freight engineers and firemen	14,385 99	10,735 22	5,051 81	30,173 02
Switch engineers and firemen	6,481 17	5,742 63	3,115 03	15,338 83
Work engineers and firemen	1,552 34	1,163 37	636 60	3,352 31
Lights & fuel for eng. houses & mac'e shops	1,615 10	289 19	536 26	2,440 55
Repairs of engine-houses and machine-shops	1,855 00	31 71	690 34	2,577 05
Passenger locomotives, coal for	6,783 33	3,005 77	1,414 40	11,203 50
Freight locomotives, coal for	8,636 35	5,650 16	2,672 02	16,958 53
Switch locomotives, coal for	2,281 34	1,638 39	770 95	4,690 68
Work locomotives, coal for	764 35	344 02	161 84	1,270 21
Passenger locomotives, wood for	698 05	669 51	314 49	1,682 05
Freight locomotives, wood for	653 95	1,342 26	583 79	2,580 00
Switch locomotives, wood for	253 16	139 40	65 60	458 16
Work locomotives, wood for	174 52	72 77	34 48	281 77
Pass. locomotives, oil, tallow, & waste for	1,793 67	814 74	383 34	2,991 75
Freight locomotives, oil, tallow, & waste for	2,066 89	1,349 69	634 27	4,050 85
Switch locomotives, oil, tallow, & waste for	672 61	473 30	222 66	1,368 57
Work locomotives, oil, tallow, & waste for	253 12	82 93	38 99	375 04
Passenger locomotives, repairs of	9,435 99	5,724 53	2,693 66	17,854 18
Freight locomotives, repairs of	14,045 63	12,822 10	6,038 43	32,906 16
Switch locomotives, repairs of	4,537 60	1,401 78	659 76	6,599 14
Work locomotives, repairs of	408 93	316 64	144 23	869 80

Appendix No. 5—Continued.

Motive power.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Passenger locomotives, cleaning of	3,021 32	1,252 04	674 13	4,947 49
Freight locomotives, cleaning of	3,291 88	2,962 42	1,586 31	7,840 61
Switch locomotives, cleaning of	1,067 37	288 72	135 85	1,491 94
Work locomotives, cleaning of	305 84	71 92	33 81	411 57
Printing and stationery	119 72	51 86	23 44	195 02
Pumping water	3,500 90	2,854 00	1,483 51	7,838 41
Superintendence	1,105 72	689 25	320 59	2,115 56
Tools and machinery, repairs of	2,456 18	341 32	1,031 88	3,829 38
Watchmen	542 50			542 50
Water stations, expenses of	4,112 98	1,004 52	1,049 26	6,166 76
Clerks	1,020 78	635 80	298 66	1,955 24
	110,442 47	71,014 41	36,797 13	218,254 01

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Maintenance of cars.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Passenger and baggage cars, repairs of	$13,882 45	7,743 54	$3,641 91	25,267 90
Sleeping cars, repairs of	1,481 29	1,536 68	696 00	3,713 97
Freight cars, repairs of	25,730 93	20.242 67	9,675 33	55,648 93
Pay car, repairs of	225 03	23 88	11 20	260 11
Car shops and sheds, repairs of	147 00	24 00	13 00	184 00
Fuel and lights for car shops and sheds	194 55		12 44	206 99
Tools and repairs of	547 81			547 81
	42,209 06	29,570 77	14,049 88	85,829 71

General expenses.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Attendants at general offices	491 41	245 65	113 94	851 00
Clerks in general offices	10,671 78	5,197 22	2,452 16	18,321 16
Fuel and lights for general offices	508 64	253 56	122 41	884 61
Rent of general offices	3,850 07	1,809 37	866 81	6,526 25
Repairs of general offices	575 01	159 77	100 83	835 61
Expenses of general offices	1,235 47	571 92	248 77	2,056 16
Salaries and expenses of general officers	16,944 15	9,367 03	4,095 70	30,406 88
Discount and interest	312 80	227 23	82 24	622 27
Legal expenses	1,400 88	280 89	748 93	2,430 70
Printing and stationery for general offices	718 16	370 80	156 33	1,245 29
	36,708 37	18,483 44	8,988 12	64,179 93

Appendix No. 5—Continued.

Summary.	St. Louis Division.	Kentucky Division.	Tennessee Division.	Total.
Conducting transportation, passenger dep't	45,974 03	19,242 06	11,082 42	76,298 51
Conducting transportation, freight dep't	113,114 32	45,121 41	24,410 96	182,646 69
Maintenance of way	108,512 79	96,169 08	36,013 88	240,695 75
Motive power	110,442 47	71,014 41	36,797 13	218,254 01
Maintenance of cars	42,209 06	29,570 77	14,049 88	85,829 71
General expenses	36,708 37	18,483 44	8,988 12	64,179 93
	456,961 04	279,601 17	131,342 39	867,904 60

Condensed Comparative Statement of Earnings for the Entire Line for the Fiscal Year Ending October 31st, 1875.

1873–1874.				Months.	1874–1875.			
Passenger.	Freight.	Mail, express, and miscellaneous.	Total.		Passenger.	Freight.	Mail, express, and miscellaneous.	Total.
$26,278 26	$66,827 18	$5,142 14	$98,247 58	November	$24,930 20	$73,179 48	$4,498 56	$102,608 24
24,780 73	67,314 00	4,247 16	96,341 89	December	28,938 67	68,844 14	5,128 95	102,911 76
27,935 65	78,551 37	5,413 20	111,900 22	January	26,302 75	53,929 88	4,303 82	84,536 45
25,594 79	69,228 16	4,623 75	99,446 70	February	22,329 74	53,624 20	4,133 48	80,087 42
28,643 23	75,092 72	4,234 96	107,970 91	March	27,948 70	57,277 89	4,673 77	89,900 36
28,492 92	62,074 11	3,429 61	93,996 64	April	28,002 16	53,094 84	4,838 49	85,935 49
31,476 88	52,905 79	4,175 66	88,558 33	May	27,438 62	40,932 96	5,352 84	73,724 42
31,983 07	60,355 33	4,600 38	96,938 78	June	23,677 56	36,060 47	5,344 86	65,082 89
34,244 90	54,000 40	4,575 38	92,820 68	July	30,443 06	32,053 04	4,649 09	67,145 19
33,340 32	73,109 11	4,475 02	110,924 45	August	28,015 22	41,068 56	4,529 54	73,613 32
38,031 45	76,458 59	4,321 52	118,811 56	September	29,882 05	54,709 25	4,085 04	88,676 34
45,769 91	80,202 90	5,892 22	131,865 03	October	32,636 33	67,576 32	4,643 23	104,855 88
$376,572 11	$816,119 66	$55,131 00	$1,247,822 77		$330,545 06	$632,351 03	$56,181 67	$1,019,077 76

Decrease in earnings for the fiscal year ending October 31st, 1875, $228,745.01.

Condensed Comparative Statement of Operating Expenses, Entire Line, for the Fiscal Year Ending October 31st, 1875.

1873–1874.			Months.	1875–1875.				
St. Louis Division.	Nashville Division.*	Total.		St. Louis Division.	Nashville Division.*			Total.
					Kentucky Division.	Tennessee Division.	Total.	
$41,040 28	$38,241 20	$79,281 48	November	$35,498 85	$20,489 10	$9,750 78	$30,239 88	$65,738 73
38,159 86	35,908 54	74,068 40	December	48,528 07	28,147 57	14,754 36	42,901 62	91,429 69
45,819 93	39,043 73	84,863 66	January	38,038 56	21,407 57	11,640 73	33,048 30	71,086 86
43,023 47	39,460 35	82,483 82	February	35,893 35	24,014 71	9,555 64	33,750 35	69,463 70
44,664 54	42,055 50	86,720 04	March	42,370 19	24,456 86	14,280 13	38,736 99	81,107 18
43,904 67	40,690 80	84,595 47	April	42,666 16	23,896 54	10,244 09	34,140 63	76,806 79
37,410 84	37,050 19	74,461 03	May	36,720 12	24,103 03	11,357 96	35,460 99	72,181 11
37,372 18	33,910 06	71,282 24	June	34,511 04	21,404 82	9,086 61	30,491 43	65,002 47
32,065 25	31,097 07	63,162 32	July	34,551 64	20,188 94	11,552 22	31,741 16	66,292 80
32,085 12	31,718 50	63,803 62	August	36,293 66	18,332 40	9,553 10	27,885 50	64,179 16
37,240 45	36,385 34	73,625 79	September	34,566 55	21,994 18	10,212 59	32,206 77	66,773 32
69,526 08	67,192 98	136,719 06	October	37,322 85	31,165 76	9,354 18	40,519 94	77,842 79
$502,312 67	$472,754 26	$975,066 93		$456,961 04	$279,601 17	$131,342 39	$410,943 56	$867,904 60
14,213 60	7,088 31	21,301 91	Less credits.					
$488,099 07	$465,665 95	$953,765 02		$456,961 04	$279,601 17	$131,342 39	$410,943 56	$867,904 60

Decrease in operating expense for the fiscal year ending October 31st, 1875, $85,860.42.

* The "Nashville Division" consists of the Kentucky and the Tennessee Divisions combined.

Comparative Statement of Earnings, St. Louis Division, for the Fiscal Year Ending October 31st, 1875.

1873–1874.				Months.	1874–1875.			
Passenger.	Freight.	Mail, express, and miscellaneous.	Total.		Passenger.	Freight.	Mail, express, and miscellaneous.	Total.
$15.611 01	$39,297 06	$2,730 17	$57,638 24	November	$15,404 40	$40,299 94	$2,637 46	$58,341 80
15,744 01	38,427 28	2,453 19	56,624 48	December	17,776 05	38,021 80	3,028 97	58,826 82
14,996 70	51,038 86	3,036 66	69,072 22	January	16,239 87	31,807 93	2,445 38	50,493 18
15,629 11	38,063 92	2,656 00	56,349 03	February	14,180 87	31,591 89	2,367 48	48,140 24
17,259 90	39,975 03	2,427 57	59,662 50	March	17,165 60	35,728 15	2,758 23	55,651 98
18,037 28	32,972 87	1,589 32	52,599 47	April	17,145 96	32,547 22	3,043 95	52,737 13
17,998 67	29,923 18	2,261 70	50,183 55	May	17,124 91	26,310 41	3,130 77	46,566 09
20,443 66	33,594 67	2,673 40	56,711 73	June	15,219 20	23,782 72	3,351 87	42,353 79
20,231 92	28,676 38	2,648 40	51,556 70	July	18,051 63	21,056 33	2,702 97	41,810 93
20,801 49	38,566 27	2,146 71	61,514 47	August	15,901 16	25,490 10	2,527 42	43,918 68
22,237 54	42,445 76	2,499 68	67,182 98	September	18,447 68	33,296 95	2,560 97	54,305 60
28,944 43	51,195 74	3,525 36	83,665 53	October	20,073 69	42,634 06	1,131 42	63,839 17
$227,935 72	$464,177 02	$30,648 16	$722,760 90		$202,731 02	$382,567 50	$31,686 89	$616,985 41

Decrease for the fiscal year ending October 31st, 1875, $105,775.49.

Comparative Statement of Earnings, Nashville Division, for the Fiscal Year Ending October, 1875.*

1873–1874.				Months.	1874–1875.			
Passenger.	Freight.	Mail, express, and miscellaneous.	Total.		Passenger.	Freight.	Mail, express, and miscellaneous.	Total.
$10,667 25	$27,530 12	$2,411 97	$40,609 34	November	$9,525 80	$32,879 54	$1,861 10	$44,266 44
9,036 72	28,886 72	1,793 97	39,717 41	December	11,162 62	30,822 34	2,099 98	44,084 94
12,938 95	27,512 51	2,376 54	42,828 00	January	10,062 88	22,121 95	1,858 44	34,043 27
9,965 68	31,164 24	1,967 75	43,097 67	February	8,148 87	22,032 31	1,766 00	31,947 18
11,383 33	35,117 69	1,807 39	48,308 41	March	10,783 10	21,549 74	1,915 54	34,248 38
10,455 64	29,101 24	1,840 29	41,397 17	April	10,856 20	20,547 62	1,794 54	33,198 36
13,478 21	22,982 61	1,913 96	38,374 78	May	10,313 71	14,622 55	2,222 07	27,158 33
11,539 41	26,760 66	1,926 98	40,227 05	June	8,458 36	12,277 75	1,992 99	22,729 10
14,012 98	25,324 02	1,926 98	41,263 98	July	12,391 43	10,996 71	1,946 12	25,334 26
12,538 83	34,542 84	2,328 31	49,409 98	August	12,113 97	15,578 55	2,002 12	29,694 64
15,793 91	34,012 83	1,821 84	51,628 58	September	11,434 37	21,412 30	1,524 07	34,370 74
16,825 48	29,007 16	2,366 86	48,199 50	October	12,562 64	24,942 26	3,511 81	41,016 71
$148,636 39	$351,942 64	$24,482 84	$525,061 87		$127,813 95	$249,783 62	$24,494 78	$402,092 35

Decrease for the fiscal year ending October 31st, 1875, $122,969.52.

* The "Nashville Division" consists of the Kentucky and the Tennessee Divisions combined.

226 And then petitioner read in evidence the following report:

227 8. *Report of Sale.*

In the Circuit Court of the United States for the Southern District of Illinois.

FREDRIK WILLIAM OEWEL *et al.*
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY CO. *et al.* } In Equity.

Consolidated.

PHILO C. CALHOUN, Surviving Trustee, &c.,
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY CO. *et al.* } In Equity.

The undersigned, the masters appointed by said court and charged with the duty of *the* making the sale herein, respectfully report—

That pursuant to the terms of said decree they gave notice that they would sell the property as described in the said decree and upon the terms and conditions in the same set forth and prescribed, at the front door (being the north door) of the United States court-house building, in the city of Springfield, Illinois, at ten o'clock in the forenoon of Tuesday, November 16th, 1880, by publishing the same in the "Chicago Times," a daily newspaper of gen-
228 eral circulation, printed and published in the city of Chicago, Illinois; also by publishing the same in the "Indianapolis Journal," a daily newspaper of general circulation, printed and published in the city of Indianapolis, Indiana; also by publishing the same in the "New York Daily Tribune," a daily newspaper of general circulation, printed and published in the city of New York, State of New York; also by publishing the same in the "St. Louis Republican," a daily newspaper of general circulation, printed and published in the city of St. Louis, State of Missouri, and also by publishing the same in the "Illinois State Journal," a daily newspaper of general circulation, printed and published in the city of Springfield, Illinois; that said publications of notice in said newspapers were made once each week for six consecutive weeks in each of said newspapers, the first insertion of which said publications in each of said newspapers was six weeks before the said 16th day of November, A. D. 1880, said publication of notices being in all respects according to the provisions of said decree of sale made by said court, August 30th, 1880, and that
229 after having given said notices, and pursuant thereto, the undersigned attended in person at the city of Springfield, Illinois, and at the north door of the United States court-house building, at ten o'clock in the forenoon of Tuesday, November 16th, 1880, in the presence of the solicitors and representatives of the several parties in interest, and did then and there at public outcry offer and expose to sale upon the terms and provisions of said decree the said property in said decree and notices described and read by the masters in the hearing of the persons so assembled, to wit:

"A line of railway beginning at East St. Louis at a point upon the Mississippi river and running thence easterly by the way of Belleville, Mascoutah, Nashville, Ashley, and Mount Vernon to McLeansboro', and thence one line of said railway running southeasterly by the way of Equality to a point upon the Ohio river at Shawneetown, and another line running easterly from McLeansboro, aforesaid by the way of Carmi to a point upon the Wabash river, and thence over a bridge erected by the said railway company over the Wabash river by the way of Mount Vernon to a point upon the Ohio river at the city of Evansville, and also a branch railway running
230 northerly from Belleville aforesaid to O'Fallon, in the county of St. Clair, in the State of Illinois, and certain other branches within the said county of St. Clair, in the State of Illinois, the said lines of railway, with their sidings, embracing a total of two hundred and thirty-five (235) miles, more or less; and also all switches, turnouts, crossings, and sidings, and all other branches and extensions of the said railway or railways constructed and operated in connection therewith; and also all rights of way, bridges, depot grounds, land, all depots and station-houses, engine-houses, car-houses, grain-houses, wood-houses, coal-houses, and all other buildings, and all fences, trestle-, and culverts appertaining to the railways above named, and all car shops and machine shops, and also all kinds of machinery and tools owned by the said company for use in connection with the said railways, and also all locomotives, tenders, cars, or other rolling-stock and equipment, and all implements, fuel, and materials for construction, operation, repairing, and replacing of the said railways or any of the said branches, and all other property of every kind, nature, and description owned by the said railway company, and also all franchises connected with or relating to the said railways at any time owned, possessed,
231 or acquired by the said St. Louis & Southeastern Railway Company (Consolidated); and also all the franchises and property of the corporations united in the consolidation of the last-named railway company, together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, except that the rent accruing from the lessee now in possession of the said railways from the 1st day of July, 1880, to the time when the deed shall be delivered under the said sale or proportionately accruing up to such time shall not pass by such sale, but shall go to the receiver of the mortgaged premises; and also all the estates, rights, titles, and interests whatsoever, as well at law as in equity, of the said St. Louis and Southeastern Railway Company (Consolidated) of, in, and to the same. The said property will be sold absolutely and without the privilege of redemption, free and clear, and discharged of and from all contracts, leases, and agreements made by the said St. Louis and Southeastern Railway Company (Consolidated), or any of its constituent corporations, with any per-
232 son or corporation, except that such sale will be made subject to all sums legally due for unpaid taxes, and also subject to the rights of the Cairo and Vincennes Railroad Company, or

of the assigns or grantees of that company in relation to the joint use of the tracks and depot grounds at or near Carmi, in the county of White, State of Illinois."

And the undersigned did, after reading the said description, announce the terms of sale as fixed by the said decree. And the undersigned, the said masters, did thereupon, then and there, offer and expose to sale as aforesaid all of the said property in said notice and decree described and ordered to be sold, and every part and parcel thereof, as an entirety, as commanded by said decree; and thereupon Henry W. Smithers, William F. Whitehouse, and Charles W. Opdyke, purchasing committee, did bid for the same the sum of three millions two hundred thousand dollars, and such bidders having in all respects complied with the said terms of sale, no one bidding more and that being the highest and best bid received for the same, said property was thereupon openly struck off and sold to them for the price aforesaid. And the said purchasers did
233 at the time of such sale pay to the undersigned in cash the sum of $150,000.00, which sum was received by the undersigned and held by them on account of the consideration money, as required by the said decree.

All of which is respectfully submitted, this 16th day of November, A. D. 1880.

WILLIAM P. FISHBACK,
M. C., U. S. Cir. Court, Dist. Indiana.
J. A. JONES,
M. C., U. S. Cir. Court, South. Dist. Ills.

(Endorsed:) Filed November 16th, A. D. 1880. J. A. Jones, clerk.

234 And then petitioner read in evidence the various decrees of the court made in said cause and appearing elsewhere in the record.

And then petitioner rested.

And the said complainants to the bills herein and parties to said suit interested in the fund arising from the sale under foreclosure decrees herein, to maintain the issue on their part, offered to read in evidence the following deposition of Edward F. Winslow, regularly taken in a certain action at law, in attachment, against the O'Fallon branch of the defendant railway company, then in the possession of the receiver in this cause, lately pending in said court, wherein the said People's Bank of Belleville was plaintiff and Edward F. Winslow and James H Wilson, partners, &c., were defendants, and the said George Opdyke and Philo C. Calhoun, trustees, were interpleaders, the record whereof is now on file in the clerk's office of the Supreme Court of the United States, and to which reference is made; and the said petitioner objected to the reading of said deposition, because it was not taken in this cause and petitioner had not had any opportunity to cross-examine the witness; but the court overruled the objections and allowed the deposition to be read in evidence, as follows:

235 9. *Testimony of Edw'd F. Winslow in Attachment Case.*

EDWARD F. WINSLOW, the defendant, being duly sworn, testified as follows:

Mr. WILSON: You may state when your connection with the O'Fallon Railway Company first began, and then state to the court precisely what your relations were to it, covering your transactions as contractor and subsequently as president of the St. Louis and Southeastern Railway Company, when as contractor you built and when as president of the St. Louis and Southeastern Railway Company you sought to acquire title for the St. Louis and Southeastern Railway Company to the Belleville and O'Fallon railway.

A. It may be necessary, in order to arrive at what is important in the case, for you to ask some questions immediately pertaining to the matter. I was living at Davenport, Iowa, and received communications from parties in Belleville requesting me to aid in the construction of a road from Belleville to O'Fallon, under a charter which had been obtained by certain citizens of Belleville. The company, I was informed, was organized under the name of the Belleville and O'Fallon Railway Company. I think this was in the year 1869 or 1870. I think
236 in consequence of those communications and subsequent conversations in behalf of the matter I went to Belleville several times, and I think in my individual capacity entered into a contract to do the grading of the road for a specified sum of money; I don't remember the amount. At this time or soon afterwards I had been a director and chosen president of the St. Louis and Southeastern Railway Company, which company was authorized to build a road from St. Louis through Belleville to Shawneetown. I, as an individual, contracted with this Belleville and O'Fallon Railway Company to do its grading, and completed the contract and received the pay for the same, with the exception of some small balance; I don't recollect the exact amount. As a contractor for the road my relations to that company ceased with the performance of that duty. I had associated with me in the matter a man by the name of Rice, who really had charge of the work and who received the pay as my agent or associate or partner—I don't recollect exactly how the thing was fixed—and he received and disbursed this money and accounted to me for the difference between the cost of the work and the amount paid by the company, or which I was entitled
237 to receive as contractor. Subsequent to this time the people of the city and the officers of that company approached me, after my relations to this road as contractor had ceased, with a view of having the road completed by the construction of the bridging and track. I declined individually to have anything further to do with the matter, and subsequent to that time never had any relation to the concern as an individual, so far as my memory goes, excepting one behalf which will be shown hereafter; but I think an arrangement was finally made by and with the advice of Mr. Charles W. Thomas, who was then the counsel of the Southeastern Railway Company, for the purpose of completing this line

as a branch of that company's railway. The charter of that company authorizing it to build branches not exceeding ten miles in length from any point on its line, as might be determined by the company and acting under the advice and counsel of Mr. Thomas, who was then, as I say, counsel for the Southeastern Railway Company. All of the proceedings in relation to the Belleville and O'Fallon Railway Company were had. One process of acquiring this
238 old grade, which at that time had become well settled, etc., was by condemnation. I advised, but Mr. Thomas drew all the papers in relation to such condemnation, acting in accordance with the powers conferred upon the Southeastern Railway Company by its charter and the laws of the State pertaining to the condemnation of property for railway purposes. A condemnation of that grade and all the interests in lands, as far as could be covered by the process, as I was informed by him, was had, and, as I believed at that time and still do believe, the Southeastern Railway Company acquired title to this right of way and to this grading on this located line. The road was constructed on that grade. The bridging was done, the track was laid, and for the purpose of obtaining money to purchase ties, lay the track, do the bridging, and complete the road I arranged or borrowed the money as president of the Southeastern Railway Company of Messrs. George Opdyke & Company, of New York.

Q. Permit me to call your attention to that letter (produc-
239 ing letter) and ask you whether that is a letter written by you to George Opdyke in that behalf.

Objected to.

A. Yes, sir; this is a letter in my handwriting as president—a communication from me as president of the company to Messrs. George Opdyke & Company relating to that loan. That is the original letter. I proceeded as president of this company to build this branch under our charter. As I was informed and believed, the charter of the O'Fallon Railroad Company had a limitation clause, which, if I remember right—I have not read it for a number of years—if I remember right it required the road to be constructed within a certain number of years *within* the time the work was commenced or from the date of the charter *of* some other fixed period or period to be fixed, and if the company failed to complete its road within that time the charter lapsed, and of course, as I was informed by our counsel, Mr. Thomas, all the powers of the charter lapsed with the charter, and there would simply be
240 a grade there without title except in the owners of the land, perhaps. I think there were two reasons why the people of Belleville were desirous of having the road built: First, because they thought it would be of great advantage to the city; and second, because this limitation of the charter was likely to make void all they had done; and the city, I think, subscribed some fifty thousand dollars of the money in bonds, I believe, with which this work was performed. I had nothing to do with pledging that subscription; it was simply a matter between themselves.

Q. To whom was the subscription—to the Belleville and O'Fallon Railway Company?

A. Acting in accordance with the arrangement which I had as president of the company, by and with the advice of the board of directors, and I think Mr. Thomas at that time was probably a member of the board of the St. Louis and Southeasten Railway Company. I am not certain, but I think he was; he had been.
241 I proceeded to use the money obtained from Messrs. George Opdyke & Company upon the pledge of bonds which were to be issued upon this O'Fallon Railroad Company to him as security. I proceeded to build this branch road for the Southeastern Railway Company, and did build it as such branch, as I believed.

Q. Who operated it thereafter?

A. The St. Louis and Southeastern Railway Company proceeded to operate it immediately after it was built, & have, I believe, continued to operate it either directly or through the receiver of the road since, and I am informed are now operating it. Soon after, during some of these proceedings, I was advised by Mr. Thomas that certain parties who had land over which the road was constructed had failed to take the sum of money which had been allowed to them or for which the land had been appraised by the commissioners under the law, and who were appointed, I think, by the county court of St. Clair county or the county judge
242 for and in behalf of the O'Fallon Railroad Company, composed as it was of citizens of Belleville and O'Fallon and other places around there. Mr. Thomas informed me that some of these parties had failed to accept the appraised amount and had commenced suit against this Belleville and O'Fallon Company for a larger sum, as is sometimes done, and advised that, in order to harass and delay these parties and perhaps complicate matters still fu-ther with them and eventually to require them to take the appraised value, that the O'Fallon Company should make a trust-deed to him, as trustee, bringing in either myself individually or myself and my partners, General Wilson, under the name of Winslow and Wilson.

Mr. Halbert, of counsel for the plaintiff, inquires of the court if conversations between the president of the St. Louis & Southeastern Railway Company and their counsel, Mr. Thomas, is proper testimony as against the plaintiff in this case; the courts allows
243 it to go in, but may not consider it.

Q. I desire to caution you to direct your attention, as closely as you can, to the construction and operation of this road and especially to the question as to whether Winslow & Wilson put any money of their own into the property or had any personal interest in its construction, except as trustees or agents.

A. In answering that question I would say that, so far as I know, Messrs. Winslow and Wilson neither of them had any interest in this property otherwise than endeavoring to assist the Southeastern Railway Company to acquire and perfect its title in the same under the advice of the counsel of the St. Louis and Southeastern Railway Company, and if any action of theirs was taken about the matter at

in Iowa on account of the serious illness of my wife, who was unable to sign; but as soon as she was able I had the notary take the acknowledgement, and she executed it, and I returned it as soon as I got that done.

249 Q. Look at those notes, the notes sued on, and state whether the writing on the back endorsing the firm of Winslow & Wilson is yours.

A. Yes, sir.

Q. State whether you have any reccollection as to the circumstances covering the execution of those notes, and especially the conversations that passed between you and the People's Bank, or their representatives, with reference to the loan and the collateral (notes dated December first, 1873).

A. These notes, if I recollect right—I have not looked up the case properly—are renewals of other paper given to the same bank which had matured along about this time or before, and for a like amount. I think at the time those notes were made Mr. Alexander was treasurer of the company, and he and I, or one of us—I think he did & I think both of us did—saw the president of the People's Bank——

Q. Who was the president of the People's Bank?

A. I think Judge Pieper, and requested an extention of time on this loan, as the company was unable to pay and as Winslow & Wilson were equally unable to pay; and I think there was

250 attached to those notes some of the first consolidated bonds of the Southeastern Railway Company as security.

Q. There is nothing to indicate on the face of the notes?

A. The company were not in the habit always of having that specified on the face.

Q. It is your impression that there was collateral?

A. Yes, sir.

It is admitted by plaintiff's counsel that there was eighty thousand dollars, face value, of consolidated bonds attached to the notes of December first, 1873.

Q. State whether, at the time this original loan was perfected between the St. Louis and Southeastern Railway Company, Consolidated, and the People's Bank, any representations were made by you, or authorized to be made by you, to the officers of this bank with reference to the ownership of this O'Fallon Branch railroad.

A. I don't see how any should have been made which controvert in any way the testimony which I have given; I at this time, looking back, do not recollect of having had conversations with

251 the officers of that bank about that loan in person, although I presume I did; these loans were some of the great many made by the company.

Q. I will ask you the general question whether at that time, or before or after, when you endorsed notes, if you were asked any questions with reference to your condition as to solvency—if you ever claimed any interest in the O'Fallon Branch property?

A. I never recollect of doing any such thing.

Q. I will ask you whether, in signing these particular notes with reference to the sufficiency of your guaranty or endorsement, you took into consideration, or if you know whether the other parties took into consideration, any interest which you may have been supposed to have in the O'Fallon Branch?

A. I didn't take into consideration that fact at any time; I don't see how anybody else could have done so.

Q. I will ask you now the general question whether, in all the proceedings with reference first to the condemnation of the O'Fallon branch, in the interest of the St. Louis and Southeastern,
252 next as to the trust deed from the O'Fallon Branch to Thomas, and from Thomas to you, and from you to Opdyke and to the company, you were not in point of fact acting under the advice of Charles W. Thomas with sole reference to perfecting the title of the Southeastern Railway Company to this property?

Objected [to] on the ground that these communications were of a privileged character.

The COURT: The witness can answer whether Mr. Thomas was the recognized attorney.

A. In all matters pertaining to the acquiring of the Belleville and O'Fallon road as a branch of the Southeastern railway I acted under and relied upon the advice of the counsel of the company for the time being, Mr. C. W. Thomas, who was paid by the Southeastern Company as such attorney, and I think such bonds were deposited as col-ateral with this paper.

Q. I will ask you if at the time this loan was made the St. Louis and Southeastern Railway Company, Consolidated, was in the
253 open and well-known possession and operation of the O'Fallon Branch railroad?

A. Yes, sir.

Q. Has it been since either by the acts of the company or otherwise?

A. Yes, sir.

Cross-examination:

Mr. THOMAS: Will you state to the court who were the contractors that built the St. Louis and Southeastern railway?

A. You mean to say the men who did the grading?

Q. No, sir; the contractors who took the contract to build it.

A. I think the railway in Illinois was built under the immediate supervision of the company.

Q. Who were the contractors under the company?

A. There were quite a number—I don't know—probably fifty or one hundred.

Q. Were Winslow and Wilson contractors?

A. In one sense; they had an interest in the construction of the road for advancing its interests in aiding in the negotiation of its bonds; they were paid a price or commission in the capital stock of the company.

Q. I ask you whether you had any written contract with the com-

pany as its contractors to build its railroad and turn it over to it in the State of Illinois?

254 A. I think there is no such contract existing.

Q. Was there any contract whatever between Winslow and Wilson and the St. Louis Southeastern Railway Company?

A. Yes, sir; there was one in the nature of the one that I have just described, which is a matter of record in the company's books.

Q. Did it have anything to do with grading the road?

A. No; not except it may have related to the fact that we were to supervise the construction of the railroad.

Q. Did it have anything to do with procuring iron and ties and laying them upon the road and making purchase?

A. I don't think it recites any of these things.

Q. You don't think Winslow and Wilson had anything to do with that?

A. They bore a relation which may be in the nature of a contractor or financial agent, or some such relation, whichever way it may be construed in law; I don't know.

255 Q. State to the court succinctly whether Winslow and Wilson had any contract with the St. Louis and Southeastern Railway Company in which Winslow and Wilson were to build the railroad, or any portion of it.

A. I am inclined to answer that question categorically and succinctly, except so far as I have stated——

Q. You don't remember that there was any contract by which you and Winslow, as contractors, undertook to build and transfer to the company the road for bonds or capital stock?

A. I think there is no such contract. There is a contract of the indefinite or general nature that I have stated.

Q. You say the only contract that Winslow and Wilson ever had with the company was in regard to its finances in negotiating its bonds and collecting its moneys?

A. The Southeastern Railway Company as now constituted, or was when I was connected with it, was made up of a conglomeration or consolidation of quite a number of companies, and Wins-

256 low and Wilson did have a contract with some of the companies.

Q. I didn't say anything about the St. Louis and Southeastern Railway Company, Consolidated. I said the St. Louis and Southeastern Railway Company. State whether you ever had any contract with the St. Louis and Southeastern Railway Company.

A. I had the contract in the manner that I have attempted in a weak manner to describe.

Q. And that is all?

A. That is all I recollect.

Q. You never had any contract to furnish the ties and iron and do the bridging for the St. Louis and Southeastern Railway Company?

A. Except under that general resolution spread upon the records of the company, for which we received certain capital stock, if I recollect right.

Q. Were you to receive any bonds?

A. I think the contract, if you call it that, does not relate to any bonds or moneys.

257 Q. Did you, individually, ever have any contract to build, grade, [or] furnish ties or iron for any portion of the St. Louis and Southeastern railroad?

A. The old company?

Q. Yes, sir.

A. I don't think I ever did.

Q. Did you have any contract with the St. Louis and Southeastern Railroad Company to build the O'Fallon Branch?

A. I did not.

Q. Did you have any contract with the St. Louis and Southeastern Railroad Company to put any iron — or furnish or equip the O'Fallon Branch?

A. Not that I ever recollect of?

Q. Did the St. Louis and Southeastern Company, in its dealings, borrow this money directly or did you borrow it for it?

A. Well, sometimes we borrowed it for the company as financial agents and sometimes the president or treasurer, or both, borrowed it for and in behalf of the company directly. We borrowed a very large amount at those times.

258 Q. I am afraid that your memory is not very clear. I want to ask you whether you ever had any contract to build, we will say, the road from McLeansboro' to the State line, going east—the old Evansville and Southern Illinois railroad, now part of this consolidated line. Did you ever have a contract to build that?

A. Messrs. Winslow and Wilson were the contractors for building that.

Objected to as immaterial.

Q. State to the court who furnished the iron to the Southeastern Railroad Company that was put upon the O'Fallon Branch.

A. You mean the mill?

Q. No, sir; I mean the persons who furnished to them; that is, the last persons who furnished it and became responsible?

A. Do you wish me to explain directly how that iron got there?

Q. Explain where it came from, who furnished it, & how the money was raised.

A. I, as president of the Southeastern Company, purchased of Marietta Iron Works, as near as my recollection serves me, a certain quantity of iron rails, of what is known as the fish-bar pattern, for and in behalf of that company, and we laid that iron upon

259 the road between Ashley and Mount Vernon, and took up certain iron rails there laid, and transported them down to Belleville, and relaid that older iron which had been in use upon the O'Fallon Branch; and it is there now as far as I know

Q. Who was that iron billed to that you put upon the road between Ashley and Mount Vernon?

A. The Southeastern Railway Company, or to the president or superintendent, as is customary and usual.

Q. That is where the iron came from?

A. Yes, sir.

Q. When did you go into partnership with General Wilson?

A. I don't recollect exactly—perhaps about 1871.

Q. Do you remember the time of year?

A. I do not.

Q. Will you state again; I didn't exactly understand your idea of how those eighty thousand dollars of bonds came to be issued on the O'Fallon road by the O'Fallon Company?

A. My memory in that matter is a little indistinct; I think you could explain that much better than I could.

260 Q. Then all the knowledge that Mr. Thomas got in that matter he procured as counsel for the Southeastern Railway Company, did he or did he not?

A. I should think he did.

Q. We understand you to state that the O'Fallon Railroad Company, according to your understanding, conveyed the title of this road to Mr. Thomas, as trustee, in order to defeat the claims of certain land-owners for right of way?

A. I think that is what it was done for.

Q. Did you know at that time that that was the purpose for which it was done?

A. I think I was advised by our counsel, Mr. Thomas, that that was the object.

Q. You were president of the St. Louis and Southeastern Railroad Company at that time?

A. I was.

Q. Were you cognizant of the fact, if it is a fact, that in the fall of 1875 a proposition was made under the direction of the St. Louis and Southeastern Railway Company in the directors' meeting to lease this O'Fallon Branch from you and General Wilson?

A. I think something was said about that.

261 Q. How came such a proposition to be made if, as you say, you had no interest in it?

A. As near as my memory serves me, after some time had elapsed following the time of Mr. Thomas as counsel for the company, Mr. Hamill's attention was directed to this company's title to the O'Fallon road, and he was requested if anything further was needed to prepare any papers necessary to still further perfect the title, and I think as such counsel he did prepare a lease. I never paid much attention to it. I don't know that I ever read it over, except in a cursory way. I looked it over in a cursory way, and I don't think any such lease was ever consum-ated, but if it was it was with the sole view of still further, if it could be, perfecting the title of the company to that property, because Mr. Hamill had advised us——

Q. We don't care anything about Mr. Hamill's advice. Who made that proposition to the board, if you know, to lease the road from you and General Wilson?

A. I don't recollect who, unless Mr. Alexander may have done it. I wasn't present at the meeting.

262 Q. Did you have any conversation with Mr. Alexander beforehand in order to enduce him to do it?

A. Yes, sir; I think I did.

Q. It was then done at your instance?

A. It was. I was advised by Mr. Hamill to have it done.

Re-examination:

Mr. WILSON: In response to inquiries of counsel on the other side you stated that your connection with the St. Louis and Southeastern Railroad Company originally was that of fiscal agents; in that line I desire to ask of you whether you had, or your company had, frequent dealings with the People's Bank of Belleville; whether other loans anterior to this and other transactions anterior to this were had between the St. Louis and Southeastern Railroad Company and yourself and that bank?

A. I don't now recollect of any.

Q. You stated in the examination-in-chief that this note was probably a renewal; I will ask you now what is your best recollections on that point?

263 A. Well, if my memory serves me correctly, the original loan was in two or three more parts, amounting in the aggregate to about forty thousand dollars, and obtained some three months before the date of these notes.

Q. And these notes were renewals of that loan?

A. Yes, sir.

Q. I will ask you if you know, and if so state, whether your relation to the company of fiscal agent was generally known along the line of the St. Louis and Southeastern railway?

A. I should think it was.

Q. Did you ever hold yourself out to the public, or did your firm ever hold yourselves out to the public, as having any other relation to the St. Louis and Southeastern Railway Company other than what was evidenced by the fact that you were president and the relations you have just indicated?

A. Not that I recollect of.

Q. I will ask you if you know, and if you do you may state, whether it was not well known to the officers of the People's

264 Bank, the fact of the capacity in which you were acting and your relations to the St. Louis and Southeastern Railway Company?

A. I should think it was; I don't see why it shouldn't have been.

Q. I will ask you if your dealings were quite extensive in Belleville.

A. I have had a great deal to do as president of the company in Belleville.

Q. In response to the question propounded by Mr. Thomas as to the object of this trust deed to Mr. Thomas he asked you if it was not to defeat the matter of compensation to the real-estate holders

along the right of way. Let me recall your attention to your testimony-in-chief and ask you if that was not upon the basis of your original examination that the parties had already been compensated.

A. Yes, sir; there were, or would have been if they had taken the award.

Q. It was not your purpose to take the property without compensation?

A. No, sir; not at all.

Q. With reference to this matter of lease that has been called out by Mr. Thomas, you may state to the court whether, in your
265 relation to it, if it should turn out by subsequent testimony that you were to have direct connection with its inception, you had any other object in view than that which you have already stated in reference to the trust deed executed.

A. No, sir; only to further secure the title of the property to the company.

Q. To prevent the landholders from getting excessive compensations?

A. Yes, sir; that may have had something to do with it. It was to carry out the idea of securing the title.

Q. The idea that was suggested by Mr. Thomas?

A. Yes, sir.

Q. I will ask you whether or not, from the first inception of the trust deed from the Belleville and O'Fallon Branch to Thomas and from Thomas to you, it was not the full intention of the firm of Winslow and Wilson to make a transfer of the title to the St. Louis and Southeastern Railway Company.

A. Oh, certainly; we intended to convey any interest we had.

Q. You never had any interest in it different from that you had stated?

A. No.

266 Q. Now, if you have any other statement which you wish to make you can do so.

A. I wish to make to your honor this personal remark: That I regret the circumstances of this loan, inasmuch as it has turned out badly, but, as a further proposition and excuse, I will say that at the time the loan was made first those bonds could have been sold in New York at a higher price than they were pledged at; consequently I thought the loan was safe and, as president of the company, made it with that idea. They might not have been sold at a price which we thought they were worth at that time, but they could have been sold for a higher price than the sum for which they were placed. I refer to the bonds that were collateral to the paper. That is the reason that Winslow and Wilson felt safe in endorsing the paper and the reason why I thought the bank was safe in making the loan, and why I advised that and other loans to be made. I had sold a million or more of them at a very much higher price at or before or about that time.

267 Q. I will ask you, in that connection, if you don't know, as a matter of fact, that the bank accepted the collateral as a

full and sufficient security, or as an adequate security, for more than they did the name of Winslow & Wilson?

A. I should think so. I don't know how valuable they considered our name, but that is the way I looked at it.

Q. I will ask you whether at that time you were largely engaged in negotiating similar loans where the interest of the company required it?

A. I was.

Q. I will ask you whether it was your rule to deposit as collateral consolidated mortgage bonds?

A. It was the rule.

Q. State whether or not it was considered by you that the consolidated mortgage bonds were a full and ample security for the loans effected by you at that time.

A. They were so considered.

Q. State whether their pledge upon the market, as you understood, or those who dealt with them, was considered as an adequate security for loans made on them.

A. Loans were made on them at a much higher rate.

Q. State whether you know, and, if you do, you may state whether the People's Bank made the loan on strength of that collateral.

268 A. I think they did.

Q. Mr. Thomas, there is one thing I neglected to ask you, it is this: Do you remember whether the parties that owned the land along the O'Fallon railroad had appealed from the award of the commissioners at the time this deed of trust was made?

A. I don't recollect.

Q. Do you remember whether they were pending at the time this deed of trust was made in the circuit court?

A. I know some proceedings were pending. I don't exactly recollect what the condition was at that time. It occurs to me that possibly the first proceedings in the court above the one which appointed the commissioners had demur-ed to or demur-ed at or dismissed or something and another one about to be or thought to be about to be instituted—something of that kind; I don't recollect the condition all around.

Q. And the object was to prevent the land-owners from——

A. It was one of the main objects. Mr. Wilson, in connection with the title, ownership, and possession of the St. Louis and Southeastern railway as to the Belleville and O'Fallon Branch, you

269 may state to the court upon which of these lines of deeds you, as the president of the company, relied for the title to that road.

A. You mean how I regard them?

Q. Yes, sir.

A. Not being a lawyer, I was not so well informed on it as some other people. I thought the process of condemnation was the most reliable and I rested upon it.

Q. Were you so advised?

A. Well, I was so advised by several people; yes, sir.

Q. Were you advised by counsel at that time that that gave you a substantial title to the property?

A. I think Mr. Thomas so advised me.

Q. I wish you would look at that instrument and state what it is.

A. It is a first consolidated mortgage bond of the Southeastern Company.

Q. State whether this is the character of the bonds that were deposited as collateral with the People's Bank.

A. Yes, sir; I believe it was; it may have been different in amount.

Q. It was of this series?

A. Yes, sir.

270 Q. State at what rate you were borrowing money on these bonds at the time the forty thousand dollars was borrowed from the People's Bank of Belleville. At what rate as collateral were these bonds usually deposited in the East?

A. From sixty to seventy-five cents.

Q. State what value at that time the company placed upon them.

A. We placed a value on them of eighty to eighty-five cents.

Q. State whether the company at that time was actively engaged in negotiating the bonds.

A. They were both in this country and in Europe. Nearly a million were subscribed for.

Q. Who was in Europe representing the company?

A. Mr. Wilson.

Q. Mr. Thomas, what was this money borrowed for?

A. It was borrowed for the general use of the company.

Q. Wasn't it borrowed to pay interest on the first debt?

A. No, sir; I believe not. I can't say at this time; but, as a matter of fact, we didn't pay any interest after this loan was made;

271 the panic intervened.

Q. Before the payment fell due?

A. Yes, sir.

Q. Wasn't it borrowed for the purpose of paying interest on the first bonds, so as to help the sale of the second?

A. At this distance of time I should say it was not.

Q. Don't you remember that no bonds were put up as collateral to the first notes?

A. Yes, sir; from what Judge Pieper says I presume that is correct. It was put up when the second loan was made, I believe. I wasn't present when the first loan was made.

Mr. WILSON: I will ask you if at any time you had not incurred very heavy liabilities in connection with the purchase of the road in Kentucky & Tennessee?

A. Yes, sir.

Q. How much did the company pay?

A. I think in round numbers they paid one party sixty or seventy thousand dollars.

And then complainants read in evidence the following decree *pro confesso*:

272 10. *Decree Pro Confesso.*

United States Circuit Court, Southern District of Illinois.

FREDRIK WILLEM OEWEL *et al.*, Compl'ts,

vs.

THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.*, Def'ts.

Bill.

WEDNESDAY, *March 31st, A. D.* 1880.

Present: Hon. Samuel H. Treat, district judge.

And now come the said complainants by Judd and Whitehouse, ther solicitors, and on their motion it is ordered that the bill of complaint in this cause be dismissed as to The Cleveland City Forge and Iron Company, Myron Ticknor and Edwin Ticknor, composing the firm of Myron Ticknor & Co.; Dent G. Tutt, composing the firm of Dent G. Tutt & Co.; R. C. Perham, James F. Comstock and James Blackman, composing the firm of James F. Comstock & Co.; James Wheeler, Edward C. Rice, Austin McDaniel, Davidson Porter, Amos Scherbaum, Christopher Stalham, George Johnson, John
273 A. Mann, Jennie Barnett, James W. Barnett, Jacob Meyers, Michael Meyers, The Southern Indiana Coal and Iron Co., John R. Adams, The Citizens' National Bank, Evansville; The Manerra Iron Co., Charles Smuck, Gabriel Smuck, Joseph Dursch, John C. Shoemaker, Henry C. Chase, William McMahan, Mary Weir, William M. Hogart, Washington Boia, William Friedrick, Francis Stackler, Vincent Wickesser, Henry Wissenger, Frederick Reitz, Joseph F. Reitz, Edward E. Jones, Hudson D. Jones, Charles L. Jones, James Cherry, Alexander Crank, William Nelson, William H. Whitworth, Paul Mathias, George Koehler, Jacob Rothschild, Joseph Goodman, Marx Frank, Joseph Gregory, Bernard Spur, Elizabeth Valerius, John Gregory, Rough & Ready Iron Works, and Charles Martel, deceased.

And it appearing that the Belleville Savings Bank, James Marlin, The People's Bank of Belleville, William Lane, H. P. H. Morgan, David Adams, J. H. Ferguson, Daniel Hay, Jacob Teters, Isham Wheeler, W. C. Shaw, George Casner, Jonathan Breeze, Ferdinand Schliefer, Augustus Schumert, Gotlieb Haeg, Henry Ziehnert, Fitz Kemmerer, and Peter Theobold, were personally served with subpœnas to appear and answer said bill of complaint more than
274 ninety days before the first day of the January term, A. D. 1880, of this court; and it further appearing that an order was entered in this cause on the 13th day of January, A. D. 1880, directing Elizabeth Bughart, W. R. McCauley, Will. S. Hay, S. R. Card, James Hogan, A. B. Barrett, Clayton Isham, Morris Wright, George S. Parrer, G. L. McGinnis, Frederick Martin, Barnett Jess, Louis Heiting, administrator of Frederic Heiting, deceased; Michael Golden, Dennis Clancey, Henry Butz, John Ennis, Thomas Sheehan, William Burke, Henry Vuke, John Mansfield, Peter Lux,

Cornelius Reily, Francis H. Cable, William Schultz, Charles Miller, Salem Goodner, John Hoxter, Alfred Covington, Jacob Wirtner, John Daily, Mathias Wechster, and Nicholas Fromong to appear, plead, answer, or demur to the complainants' bill of complaint herein filed by the first Monday in the month of March, A. D. 1880, which order was by the terms thereof to be published and has been published in the Illinois State Register, a daily newspaper published in the city of Springfield, State of Illinois, for a period of not less than four consecutive weeks prior to said first Monday in March, 1880.

And the said defendants, The Belleville Savings Bank, James Marlin, The People's Bank of Belleville, Elizabeth Bughart, William Lane, H. P. H. Morgan, David Adams, J. H. Ferguson,
275 W. R. McCauley, Daniel Hay & Will. S. Hay, Jacob Teters, Isham Wheeler, W. C. Shaw, S. R. Card, James Hogan, A. B. Barrett, George Casner, Clayton Isham, Morris Wright, George S. Parrer, G. L. McGinnis, Frederic Martin, Jonathan Breeze, Ferdinand Schliefer, Barnet Jess, Louis Heiting, administrator of Frederick Heiting, deceased; Michael Golden, Dennis Clancey, Augustus Schumert, Henry Butz, John Ennis, Thomas Sheehan, Gotlieb Haege, William Burke, Henry Vuke, John Mansfield, Peter Lux, Cornelius Riley, Henry Zeihuert, Francis H. Cable, William Schultz, Fritz Kemmerer, Peter Theobald, Charles Miller, Salem Goodner, John Hoxter, Alfred Covington, Jacob Wirtner, John Daily, Mathias Wechsler, and Nicholas Fromong, having been now here each three times solemnly called, came not, but made default: Therefore, upon motion of Judd and Whitehouse, solicitors for complainants, it is ordered, adjudged, and decreed that the bill of complaint herein and the matters and things therein contained be, and the same are hereby, taken for confessed as against each and every of the said above-named defendants.

276 And then complainants read in evidence the exhibit marked No. 1 and the testimony of the said Pieper on cross-examination appearing above.

And this was all the evidence in the case.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed August 10th, 1883. J. A. Jones, clerk.

And afterwards, to wit, on the 5th day of September, in the year last aforesaid (1883), came the said petitioner, and filed in said cause his appeal bond, which was approved by the court, and is in the words and figures following, to wit:

277 *Appeal Bond.*

In the Circuit Court of the United States for the Southern District of Illinois.

PHILO C. CALHOUN, Survivor, Trustee,
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

FREDRIK WILLEM OEWEL *et al.*
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

In the Matter of the Intervening Petition of JOSEPH PENN, Assignee of the People's Bank of Belleville, Illinois.

Know all men by these presents that we, Joseph Penn, assignee of the People's Bank of Belleville, as principal, and F. H. Pieper, as surety, are held and firmly bound unto Philo C. Calhoun, trustee, &c., above named, complainant, in the sum of five hundred dollars ($500), to be paid to the said Philo C. Calhoun, trustee, &c., his heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

278 Sealed with our seals and dated this 19th day of August, A. D. 1883.

Whereas the above-named Joseph Penn, assignee of the People's Bank of Belleville, has prosecuted an appeal to the Supreme Court of the United States to reverse the final decree rendered in favor of the complainants in the above-entitled consolidated cause on the 10th day of August, A. D. 1883, by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of the above obligation is such that if the above-named Joseph Penn, assignee as aforesaid, shall prosecute his said appeal with effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOSEPH PENN, *Assignee.* [SEAL.]
F. H. PIEPER. [SEAL.]

Approved.
S. H. TREAT, *Dist. Judge.*

(Endorsed:) Filed Sept'r 5th, A. D. 1883. J. A. Jones, clerk.

279 *Clerk's Certificate.*

In Circuit Court.

UNITED STATES OF AMERICA, } *ss:*
Southern District of Illinois, }

I, John A. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify

that the foregoing is a true and correct copy of all the papers filed and the proceedings thereon had in said court in the matter of the intervening petition of Joseph Penn, assignee of the People's Bank of Belleville, Illinois, filed in the following consolidated cause pending in said court, to wit:

FREDRIK WILLEM OEWEL *et al.*
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Consolidated.

PHILO C. CALHOUN, Survivor, Trustee,
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY (Consolidated) *et al.* } In Chancery.

Together with copies of certain proceedings had in the said consolidated cause, all of which fully appear from the records and
280 files in said cause now in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Springfield, in said district, this 8th day of October, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth year.

[The Seal of the Circuit Court of the United States for the South'n Dist. of Ill.]

J. A. JONES, *Clerk.*

Endorsed on cover: S. Illinois C. C. U. S. No. 172. Joseph Penn, assignee of the People's Bank of Belleville, appellant, *vs.* Philo C. Calhoun, trustee, &c. Filed 15th October, 1883.

121-251

No. 172,

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1886.

JOSEPH PENN, ASSIGNEE OF THE PEOPLES BANK OF BELLEVILLE,
Appellant,

—vs.—

PHILO C. CALHOUN, TRUSTEE, *et al.*, &C.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT, BRIEF AND ARGUMENT OF APPELLANT.

CHARLES WAIT THOMAS,
Solicitor for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1886.

JOSEPH PENN, ASSIGNEE OF THE PEOPLES BANK OF BELLEVILLE,
—*vs.*—
PHILO C. CALHOUN, TRUSTEE, *et. al.*

No. 172.

Appeal from the Circuit Court for the Southern District of Illinois.

STATEMENT OF THE CASE.

The decree of the Circuit Court, rendered at the June Term, 1880, in the main case, recites in proper order a number of material facts necessary to a comprehension of the questions of law raised by this record, and those recitals are here reproduced as a succint statement of such facts as are wholly undisputed. The decree finds:

I. That the St. Louis and Southeastern Railway Company, of the State of Illinois, was duly incorporated under and by virtue of an act of the Legislature of the State of Illinois, entitled "An act to incorporate the St. Louis and Southeastern Railway Company," passed March 10, 1869; and that the said corporation, by due authority of law, prior to the 1st day of October, 1869, constructed, in whole or in part, under its corporate powers, a railway in the State of Illinois, extending from East St. Louis, upon the Mississippi river and in the State of Illinois by the way of Mount Vernon, McLeansboro', and Equality, Illinois, to Shawneetown, upon the Ohio river, in the State of Illinois, a distance of about one hundred and sixty miles.

II. That on or about the 1st day of October 1869, the said St. Louis and Southeastern Railway Company, as thereto duly authorized by law, executed, under its corporate seal, its twenty-two hundred and fifty (2,250) bonds, in the sum of one thousand
16 dollars each, payable in gold coin of the United States on the 31st day of October, 1894, at the office or agency of the company in the city of New York, with interest at the rate of seven per cent. per annum, payable in like gold coin, on the first days of November and May in each year, on the presentation and surrender of the coupons annexed to said bonds as they severally became due.

That the said bonds provided that in case of default for the period of four months in the payment of the interest on any of the said bonds the whole principal sum should become due and payable.

And that to secure the payment of the said bonds and the interest thereupon the said St. Louis and Southeastern Railway Company, on the 1st day of October, 1869, duly made, sealed with its common seal, and executed and delivered to Philo C. Calhoun and George Opdyke, of the city of New York, as trustees, a mortgage or deed of trust in and by which the said railway company conveyed unto the said trustees the aforesaid railway from East St. Louis to Shawneetown, situate, lying, and being in the State of Illinois, the length thereof being about one hundred and sixty miles, and also all the land and other property then owned or which should thereafter be acquired by the said railway company in connection with the said railway, and also all the property, real or personal franchises, rights, and things, of whatever name or nature, connected with or in any

way appertaining to the said railway then owned or thereafter acquired.

That the said mortgage or deed of trust was prior to the 28th day of November, 1869, duly recorded in in the counties of St. Clair, Clinton, Washington, Jefferson, Hamilton, Saline, and Gallatin, in the State of Illinois, in which counties the said railway property was situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned, and is a first lien upon the aforesaid railway from East St. Louis to Shawneetown aforesaid, embracing one hundred and sixty miles of railway, more or less, and its appurtenances, including all the lands and the erections thereon, and all the equipments of the said railway company used upon or appertaining to the said railway, whether owned at the time of the making of the said mortgage or acquired at any time afterwards.

III. That the Evansville and Southern Illinois Railroad Company of Illinois was duly incorporated under and by virtue of an act of the Legislature of the State of Illinois, entitled "An act to incorporate the Evansville and Southern Illinois Railroad Company," passed the 26th of March, 1869, with power to construct, maintain, and operate a railway in the State of Illinois, from McLeansboro', in the county of Hamilton, in the State of Illinois, by the way of Enfield and Carmi, Illinois, to the dividing line between Indiana and Illinois, a distance of about thrity-five miles, and that the said railroad company, by virtue of a joint resolution passed by the Congress of the United States of America, approved July 14, 1870, became possessed of the right to construct a bridge for railroad

purposes across the Wabash river, a distance of about one-quarter of a mile.

IV. That by due authority of law the aforesaid St. Louis and Southeastern Railway Company and the aforesaid Evansville and Southern Illinois Railroad Company were upon February 21, 1871, consolidated into one body corporate, called and named The St. Louis and Southeastern Railroad Company of Illinois, the said body corporate succeeding to all the rights, priveleges, franchises, and property of the said two constituent companies as fully and as such corporations had possessed and enjoyed the same.

V. That the Evansville, Carmi and Paducah Railroad Company prior to the month of February, 1871, was a corporation duly organized under and in pursuance of the statutes of the State of Indiana, and especially an act of the Legislature of said State entitled "An act to provide for the incorporation of railroad companies," approved May 11, 1852, and the acts amendatory thereof and supplemental thereto, with power to construct, maintain, and operate a railway from Evansville, Indiana, to the line of the State of Illinois on the Wabash river to a junction with the railway of the Evansville and Southern Illinois Railroad Company, a distance of about thirty-two miles.

VI. That the aforesaid St. Louis and Southeastern Railroad Company of Illinois and the aforesaid Evansville, Carmi and Paducah Railroad Company of Indiana, by due authority of law, did, on the 28th
17 day of February, 1871, consolidate their said corporations into one body corporate, called and named the St. Louis and Southeastern Railway Company of Illinois and Indiana, the said last-named body corporate thereby becoming possessed of all the

rights, priveleges, franchises, and other property of the said two companies as fully as such corporations had possessed and enjoyed the same.

That prior to the 1st day of March, 1871, there had been constructed, in whole or in part, by the aforesaid St. Louis and Southeastern Railroad Company, by the aforesaid Evansville and Southern Illinois Railroad Company, and by the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana, a railway extending from a point of connection with the before described railway of the St. Louis and Southeastern Railway Company of Illinois, at or near McLeansboro', in the county of Hamilton, in the State of Illinois, via Enfield and Carmi to the Wabash river, and also a railroad bridge over the Wabash river, and also a continuation of the said railway from the easterly line of the State of Illinois to Evansville, in the State of Indiana, a distance in all of about sixty-seven miles.

And that on the 1st day of March, 1871, the said railway from McLeansboro, to Evansville, as well as the aforesaid railroad from East St. Louis to Shawneetown, was owned and possessed by the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana.

VII. That about the 1st day of March, 1871, the said St. Louis and Southeastern Railway Company of Illinois and Indiana, as thereto duly authorized by law, executed under its corporate seal its one thousand (1,000) bonds in the sum of one thousand dollars ($1,000) each, known as its Evansville division first-mortgage bonds, payable in gold coin of the United States on the 31st day of October, 1894, at its office or agency in the city of New York, with interest at

the rate of seven per cent. per annum, payable in like gold coin on the first days of November and May in each year, on the presentation and surrender of the coupons annexed to said bonds as they severally became due.

That the said bonds provided that in case of default for a period of four months in the payment of interest on any of the said bonds the whole principal sum should become due and payable.

And that, to secure the payments of the said bonds and the interest thereupon, the said St. Louis and Southeastern Railway Company of Illinois and Indiana, on the first day of March, 1871, duly made, sealed with its common seal and executed and delivered to Philo C. Calhoun and George Opdyke, of the city of New York, as trustees, a mortgage or deed of trust, in and by which the said railway company conveyed unto the said trustees the aforesaid railway from McLeansboro', Illinois, to Evansville, Indiana, the length thereof being about sixty-seven miles, of which about thirty-five miles were situate, lying and being in the State of Illinois, and about thirty-two miles in the State of Indiana; and also all the land and other property then owned or which should thereafter be acquired by the said railway company in connection with the said railway; and also all the property, real or personal, franchises, rights, and things of whatever name or nature connected with or in any way appertaining to the said railway then owned or thereafter acquired.

That the said mortgage or deed of trust was, prior to the ninth day of April, 1871, duly recorded in the counties of White and Hamilton, in the State of Illinois, and in the counties of Vanderburg and Posey,

in the State of Indiana, in which counties the said railway property was situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned, and is a first lien upon the aforesaid railway from McLeansboro', Illinois, to Evansville, Indiana, embracing sixty-seven miles of railway and its appurtenances, including all the land and the erections thereon, and all the equipment of the said corporation used or appertaining to the said railway, whether owned at the time of the making of the said mortgage or acquired at any time afterwards.

VIII. That thereafter the said St. Louis and Southeastern Railway Company of Illinois and Indiana, by due authority of law, undertook the construction of a branch of its railway from Belleville, in St.
18 Clair county, Illinois, to O'Fallon, in the same county, and also the construction of certain other branches within the said county of St. Clair. And that on or before the first day of August, 1872, the said railway company was possessed of about seven miles of such branch railways in said county of St. Clair, with power to mortgage the same.

IX. That on or about the first day of August, 1872, the said St. Louis and Southeastern Railway Company of Illinois and Indiana, as thereto duly authorized by law, executed under its corporate seal its one hundred and five (105) bonds in the sum of one thousand dollars ($1,000) each, known as its branch series first-mortgage bonds payable on the 31st day of October, 1894, at its office or agency in the city of New York, with interest at the rate of seven per cent. per annum, payable in gold coin of the United States on on the first days of November and May in each year,

on the presentation and surrender of the coupons annexed to said bonds as they severally become due.

That the said bonds provided that in case of default for a period of four months in the payment of interest on any of the said bonds the whole principal sum should become due and payable.

And to secure the payment of said bonds and the interest thereupon the said St. Louis and Southeastern Railway Company, on the first day of August, 1872, duly made and sealed with its common seal, executed and delivered to Philo C. Calhoun and George Opdyke, of the city of New York, as trustees, a mortgage or deed of trust, in and by which the said railway company conveyed unto the said trustees the aforesaid branch railway from Belleville to O'Fallon, in said county of St. Clair, and the other branch railways of the said company in the said county of St. Clair, being in all about seven miles in length, and also all the lands and other property which should thereafter be acquired by the said railway company in connection with the said branch railway from Belleville to O'Fallon aforesaid, and the other branch railways in St. Clair county aforesaid belonging to said railway company, embracing a total length of seven miles of railway; and also all the property, real or personal, franchises, rights, and things, of whatever name or nature, connected with or in any way appertaining to the said railway.

That the said mortgage or deed of trust was, prior to the sixteenth day of October, 1872, duly recorded in the county of St. Clair, in the State of Illinois, in which county the said railway property is situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned, and

is a first lien upon the said branch railway from Belleville to O'Fallon, in the county of St. Clair, and upon the other branch railways of the said company in the said county of St. Clair, embracing a total length of seven miles of railway.

X. That all the aforesaid first-mortgage bonds, to-wit, the series of $2,250,000 of the first-mortgage bonds of the St. Louis and Southeastern Railway Company of Illinois, the series of $1,000,000 of the first-mortgage bonds of the Evansville Division of the St. Louis and Southeastern Railway Company of Illinois and Indiana, and the series of $105,000 of the first-mortgage branch series bonds of the last-named railway company were from time to time issed, sold, and negotiated by the railway companies, the makers thereof respectively, and transferred to various purchasers for value, and that all the said bonds are now outstanding and valid and subsisting obligations and held by various individuals, firms, and bodies corporate who became and are now the holders and bearers thereof, and entitled to the moneys therein mentioned and agreed to be paid.

XI. That thereafter the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana, by due authority of law, did consolidate its said corporation with certain other corporations duly organized and existing within the States of Kentucky and Tennessee, to-wit, The Evansville, Henderson and Nashville Railroad Company, of the State of Kentucky; The St. Louis and Southeastern Railway Company, Kentucky Division, of the State of Kentucky, and The Nashville, Chicago, and St. Louis Railroad Company, of the State of Tennessee, and that the said corporations thereby became one body

ana within which the said railway property, or any portion thereof, was situated.

That the said mortgage or deed of trust was a valid conveyance for the purposes therein mentioned and is a lien upon the whole of the aforesaid railway and its equipment at any time owned by the said corporation within the States of Illinois and Indiana, subject, however, to the lien heretofore ascertained of the mortgages hereinbefore described, and also a lien upon the said railways in the States of Kentucky and Tennessee, subject to prior liens.

XIII. That all the aforesaid consolidated bonds, amounting in the aggregate to the sum of four million nine hundred and twenty-two thousand dollars ($4,922,000), were from time to time issued, sold, and negotiated by the railway company, the maker thereof, and transferred to various purchasers for value, and that all the said bonds are now outstanding and valid and subsisting obligations, and held by various individuals, firms and bodies corporate who became and are now the holders and bearers thereof and entitled to the moneys therein mentioned and agreed to be paid.

XIV. That on or about the first day of August, 1874, the said St. Louis and Southeastern Railway Company (Consolidated) made and delivered to the said P. C. Calhoun and George Opdyke a chattel mortgage upon all its equipment, rolling-stock, and personal property in the States of Illinois and Indiana, in trust to secure the holders of the said first and consolidated mortgage bonds according to their respective priorities, and thereby constituted a good and valid lien in their favor upon the property so mortgaged.

XV. That the said St. Louis and Southeastern Railway Company (Consolidated), or its predecessors or others in its behalf, duly paid the interest maturing upon all the bonds hereinbefore described, as the same was demanded, down to and including the interest upon the aforesaid first-mortgage bonds maturing on the first day of May, 1873, and also duly paid all interest maturing upon the said consolidated mortgage bonds, as the same was demanded, down to and including that maturing the 1st day of August, 1873, but that sundry coupons maturing on or before the last-mentioned dates were not presented for payment and have not been paid, the amount of which is as hereinafter stated.

That the said St. Louis and Southeastern Railway Company (Consolidated), on the first of November, 1873, and on the first days of May and November in each succeeding year, failed to pay the installments in gold coin of the United States for each of the said interest periods maturing at such times on the aforesaid first-mortgage bonds; that no part of the said installments of interest has been paid, except as hereinafter mentioned, although the said interest was duly demanded by the holders of the said bonds and coupons thereon when and where the said interest became due and payable according to the tenor and effect of the said bonds; that thereafter, in the suit institued by the said trustees, Calhoun and Opdyke, to foreclose the aforesaid consolidated mortgage bearing date October 1st, 1872, (being one of the causes consolidated by this decree), J. F. Alexander was appointed receiver of the mortgaged property, and entered into possession of the same and operated the said railways; that thereafter the said Alexander

departed this life, and James H. Wilson was appointed and continued to act as receiver in his stead; that the said receivers have applied a portion of the income coming to their hands as such receivers to the payment of the aforesaid installments of interest, with the effect that all interest which accrued upon the aforesaid mortgage bonds on the first day of November, 1873, and the first day of May, 1874, which has been demanded from the said receivers, has been paid, but certain coupons, the payment of which has not been demanded of the said receivers, remain unpaid.

That there still remains unpaid, of the interest due upon the aforesaid first-mortgage bonds, the following sums in gold coin, namely:

Interest due on 1st day of November, 1870	$ 35 00
Interest due on 1st day of November, 1871	280 00
Interest due on 1st day of November, 1872	70 00
Interest due on 1st day of May, 1873.....	210 00
Interest due on 1st day of November, 1873	1,750 00
Interest due on 1st day of May, 1874.....	2,780 00
Interest due on 1st day of November, 1874	117,425 00
Interest due on 1st day of May, 1875.....	117,425 00
Interest due on 1st day of November, 1875	117,425 00
Interest due on 1st day of May, 1876.....	117,425 00
Interest due on 1st day of November, 1876	117,425 00
Interest due on 1st day of May 1877.....	117,425 00
Interest due on 1st day of November, 1877	117,425 00
Interest due on 1st day of May, 1878.....	117,425 00
Interest due on 1st day of November, 1878	117,425 00
Interest due on 1st day of May, 1879.....	117,425 00
Interest due on 1st day of November, 1879	117,425 00
Interest due on 1st day of May, 1880.....	117,425 00

That interest is due upon the respective

amounts named from the respective dates of the maturity of such installments of interest at the rate of seven per centum per annum.

That, however, a credit is to be made upon the amount so ascertained of the sum of eighty-five thousand dollars ($85,000), being amount paid by the receiver herein, on account of the coupons due November 1, 1874.

XVI. That the said St. Louis and Southeastern Railway Company (Consolidated), on the 1st day of February, 1874, and on the 1st day of August, 1874, and on the 1st days of February and August in each succeeding year, made default in the payment of the installments of interest coming due, at the said respective times, upon the bonds secured by the said consolidated mortgage (the said installment of interest due February 1st, 1874, being $145,880, and thereafter each of said installments of interest, amounting to the sum of one hundred and seventy-two thousand two hundred and seventy dollars ($172,270) in gold coin of the United States), and that no part of the said interest has been paid by the said company or by any one for it, although the said interest was duly demanded by the holders of the said bonds and coupons thereon when and where the said interest became due and payable according to the tenor and effect of the said bonds; that interest is due on such installments of interest from their respective dates of maturity at the rate of seven per cent. per annum.

XVII. That the principal of the aforesaid first-mortgage bonds has become due and payable by reason of the said default on the part of the railway company to pay the interest thereon as the same matured and by reason of the action of the trustees

in the said mortgages in declaring the said principal due; that the amount due by the said St. Louis and Southeastern Railway Company (Consolidated) to the holders of the said first-mortgage bonds and of the unpaid coupons thereon is as follows, namely:

The amount due for and on account of the principal of the first-mortgage bonds is three million three hundred and fifty-five thousand dollars ($3,355,000), and that the amount of interest upon the said bonds unpaid, whether represented by coupons or otherwise, and including interest upon said unpaid interest, did on the first day of August, 1880, amount to the sum of one million six hundred and twenty-seven thousand six hundred and thirty-seven $\frac{72}{100}$ dollars ($1,627,637.72), making the whole amount due for principal and interest on the 1st of August, 1880, the sum of four million nine hundred and eighty-two thousand six hundred and thirty-seven $\frac{72}{100}$ dollars ($4,982,637.72).

XVIII. That the holders of the aforesaid consolidated mortgage bonds, being secured as well (under the terms of the mortgage securing the said bonds) upon certain railways within the States of Kentucky and Tennessee, did on or about the month of October, 1874, institute suits in the States of Kentucky and Tennessee for the enforcement of the lien of the said mortgage upon the railways within the said States respectively, and did proceed in the said suits to decrees and sales of the said mortgaged property within said States with the result that they have received from the proceeds of the said sales the following sums, namely:

From the proceeds of the sale of the mortgaged premises within the State of Kentucky the sum of

fifty thousand dollars ($50,000), paid on or about the 29th day of July, 1879, and from the sale of the mortgaged property within the State of Tennessee the sum of four hundred and twenty-eight thousand eight hundred and ninety-nine $\frac{89}{100}$ dollars ($428,899.89), the same having been paid on or about the 29th day of July, 1879.

That the principal of the aforesaid consolidated mortgage bonds has become due and payable by reason of the said default on the part of the railway company to pay the interest thereon as the same matured and by reason of the action of the trustees in the said mortgages in declaring the said principal due.

That the amount due by the said St. Louis and Southeastern Railway Company (Consolidated) to the holders of the said consolidated bonds and of the unpaid coupons thereon, independently of the payments made as aforesaid, is as follows:

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The amount due for and on account of the principal sum of the said bonds is the sum of four million nine hundred and twenty-two thousand dollars ($4,922,000), and the amount of interest upon the said bonds unpaid, whether represented by coupons or otherwise, including interest on such unpaid interest, on the 1st day of August, amounted to the sum of three million forty-eight thousand seven hundred and ninety-six $\frac{82}{100}$ dollars ($3,048,796.82), and that, after crediting the payments above made, the whole amount due to the holders of the said consolidated mortgage bonds and coupons, with interest to the 1st day of August, 1880, is the sum of seven million four hun-

dred and sixty-one thousand eight hundred and sixty-six $\frac{93}{100}$ ($7.461,866.93).

In addition to the facts above recited, the following are disclosed by the record:

Default having been made in the payment of interest upon the $4,922,000 of bonds issued by the St. Louis and Southeastern Railway Company (Consolidated) and secured by the deed of trust which was a second lien upon all the corporate property and franchises, the trustees, Philo C. Calhoun and George Opdyke, filed their bill in equity to the September Term, 1874, of the Circuit Court for the Southern District of Illinois, to foreclose the deed of trust, and on the 21st day of October in that year, one. J. F. Alexander, was appointed Receiver of the property with power to operate the line of railroad described in the deed, pending the litigation.

On the 2d day of September, 1876, Alexander having died, one James H. Wilson was appointed in his stead.

On the 3d day of July, 1879, Frederick William Oewell and others, holders of the issues of bonds which were secured by first liens, filed their bill in the same court to foreclose their liens.

In addition to all the corporations responsible for the payment of the bonds, the complainants made various individuals and corporations having judgments against the railroad companies and claiming liens upon the property, parties defendant.

Among those thus brought into court was The Peoples Bank of Belleville.

On the 31st day of March, 1880, the bill of Oewell *et al.* was taken as confessed by many of the defendants, including the Peoples Bank of Belleville, but

as the bill is not in the record and its charge as to the Peoples Bank is not known, it is not possible to state the effect of the decree upon the Bank, (Rec. p. 272), even if that were important, as the bank, had long before that bill was filed, made the assignment hereinafter mentioned and was not a necessary or proper party to the suit.

On the 30th day of August, 1880, the two suits to foreclose were consolidated and a decree of foreclosure entered.

The Masters sold the property for $3,200,000, on November 16th, 1880, and reported the sale the same day.

This is a history of the main case as disclosed by the record. There is, however, another series of facts upon which the case presented by the Intervenor rests. Those facts are as follows:

The Peoples Bank of Belleville was a banking corporation, incorporated by the General Assembly of Illinois, in 1869, and doing business in the city of Belleville, on the line of the St. Louis and Southeastern Railway.

In August and September, 1873, the St. Louis and Southeastern Railway Company (Consolidated), borrowed of The Peoples Bank the sum of $40,000 and received as collateral security for the loan $80,000 of the "consolidated" or second mortgage bonds of the company (Rec. pp. 90, 91, 92) and the notes which witnessed the loan were endorsed by Winslow & Wilson, an irresponsible firm.

At the time this loan was made the company was hopelessly insolvent. During the fiscal year ending July 31st, 1873, it had as net earnings $230,000 (Rec. p. 164) with which to meet an interest charge of

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At the time this loan was made the company was hopelessly insolvent. During the fiscal year ending July 31st, 1873, it had as net earnings $230,000 (Rec. p. 164) with which to meet an interest charge of

$234,850 on its first mortgage bonds, (Rec. p. 20) and a large outlay for permanent betterments and improvements. (Rec. p. 138). The improvements were made and the interest paid with borrowed money.

During the fiscal year ending July 31st, 1874, in which the money was borrowed of the Peoples Bank, the financial condition of the Company was worse than in the year previous. Its total net earnings were $285,251.86. (Rec. p. 181.) With this sum it was called upon to meet a liability for permanent improvements which enhanced the value of the property, amounting to $395,121.12; also the interest of its first mortgage bonds, amounting to $234,850, being two semi-annual installments of $117,425 each (Rec. p. 20); also an installment of interest due February 1, 1874, on such of its consolidated bonds as had been disposed of, amounting to $145,880. (Rec. p. 21). The deficit therefore amounted to $490,599,26. The permanent improvements alone exceeded the net income by almost $100,000, leaving no funds whatever out of which to pay the interest coupons on either the first or second bonds falling due in that year. All the interest on the first mortgage bonds due on November 1, 1873, and May 1, 1874, amounting to $234,850, except a trivial sum for which coupons were not presented, was paid with borrowed money, and the deficit of $100,000 in the account for permanent improvements was supplied in the same manner. (Rec. pp. 152, 153). The amount needed was about $335,000. The amount borrowed was $380,000.

There seems to have been no time when the company was solvent. Its net earnings up to the time

the receiver was appointed amounted to $1,643,-986.74, while the sum of its interest and permanent improvement account was $1,643,690.38, leaving a deficit of $271,600.64. In view of this discouraging state of affairs, the president of the company in his report to the stockholders, made October 2, 1873, which was about the time the loan from the Peoples Bank was effected, in speaking of the second or consolidated bonds said, "judging from the present outlook, it would be highly imprudent to base any calculations upon the prospect of their negotiation in time to meet the maturing obligations of the company, *and hence some other measures for relief must be found in order that the property may be maintained and preserved until the consolidated bonds can be disposed of advantageously*." (Rec. p. 163).

Having in view this necessity, E. F. Winslow, president of the consolidated company, after frequently consulting with Calhoun and Opdyke, the trustees in both the mortgages, (Rec. p. 124) who were all the time parties to and cognizant of the company's financial plans, and aware of its condition, determined to borrow money to supply the deficiencies in the interest and improvement accounts, hoping that payment of the coupons due would give value to the second or consolidated bonds, by the sale of which the pressing needs of the company might be met and the loans made, paid off. Application was therefore made to various banks, and loans effected to the amount, as far as disclosed, of about $335,000. (Rec. pp. 152, 153).

The Peoples Bank of Belleville was among the banks thus approached. The president and treasurer, in August, 1873, borrowed of it the sum of $20,000,

and a like sum in September of the same year. In December, 1873, the loan was consolidated and a note for $40,000 given and a deposit of $80,000 of the second mortgage bonds made as collateral security. At a sale of this collateral made by the bank after the $40,000 note matured, at which the company's attorney was present, the bonds realized only $160. These bonds were taken by the bank in lien of personal security given at the time the first loan was effected, that security being released at the company's request. They were practically valueless as the whole property at the Master's sale brought less than the first lien. At the time these loans were effected the insolvency of the company was concealed from the bank, nor does it appear that any one of the banks from which loans were made had any knowledge of the action of the others. As far as the plan was disclosed to the Peoples Bank, it did not show that any loan other than the one asked from it was to be made.

When the $40,000 note fell due it could not be paid and the collateral security turned out to be worthless. Suit was brought by the bank against the company in the Circuit Court of St. Clair County, Illinois, and judgment for $46,522.20 recovered January, 18th, 1876. (Rec. pp. 39, 40). Executions were issued upon this judgment to the various counties in Illinois through which the railroad was built, upon the theory, then widely entertained, that a railroad deed of trust, in Illinois, did not cover rolling stock, unless acknowledged as a chattel mortgage.

On the 22d day of April, 1878, the bank became insolvent and made an assignment to Joseph Penn, the intervenor, under the Voluntary Assignment Act

of Illinois, (Rev. Stat. Ill., Chap. 72), for the benefit of its creditors.

On the 30th day of November, 1880, fourteen days after the sale by the Masters, under the foreclosure decree, and while the fund arising therefrom was in court, Penn intervened in the cause and filed his petition, setting up the loan to the bank, the insolvency of the company at the time, the purposes of the loan, the application of the proceeds thereof to the payment of interest on the first mortgage coupons and to permanent betterments of the property; the obtaining of the judgment by the bank and the issuance of the executions, (Rec. pp. 29 to 38), and claimed two things: First a prior lien as to a certain portion of the rolling stock, upon the theory that the lien of the executions was superior to that of the foreclosed mortgages; and, second, that the first mortgage bondholders, who had been paid with the bank's money procured by a fraud in which their trustees participated, or whose property had been permanently improved with that money, were, under the circumstances of the case, bound in equity to return it out of the fund, arising from the sale of the property.

Subsequently, on the 14th day of October, 1881, Penn filed an amended petition not materially different from the original, and this was answered by the parties in interest. The answer make four defenses; First—The bank took collateral and personal security for its loan and thereby losts its equities. Second—The company did not apply the loan to paying interest or for permanent betterments. Third—the rolling stock was covered by the mortgages, and Fourth—the bank was party to the original suit and was duly

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served and defaulted and set up no defense and made no claim.

The issue made on the petition of the intervenor was tried on the 10th day of August, 1883, and the petition dismissed, whereupon the intervenor appealed to this court.

On the hearing the court permitted the respondents to the petition to read in evidence a deposition of one Edward F. Winslow, taken in another suit to which the petition was not a party. This was done over the specific objections of petitioners made at the time. (Rec. p. 234).

ASSIGNMENT OF ERRORS.

I. The Circuit Court erred in dismissing the petition of the intervenor, and

II. In not providing for the payment of the claim of petitioner as set out in his petition from the proceeds of the foreclosure sale, and

III. In not declaring the claim of petitioner upon the fund arising from the foreclosure sale to be prior and superior to that of the bond coupon holders, and

IV. In admitting in evidence a paper purporting to be the deposition of Edward F. Winslow, appearing in the record on pages 235 to 271 inclusive.

BRIEF OF THE ARGUMENT.

When the intervening petition in this case was filed it was the more or less accepted opinion of the profession in Illinois that a railroad mortgage, unless acknowledged and recorded as a chattel mortgage, created no lien upon rolling stock. Since that time, however, both the Supreme Court of Illinois and this Court have held otherwise, and this case, so far as it depends upon the point stated, is abandoned.

This leaves but one question to be argued, to-wit: whether under the circumstances of this case there was not such a fraud practiced upon the Bank, with with notice to the bondholders through their trustees, as would make the fund arising from the foreclosure sale liable to reimburse the Bank before any distribution can be made to the owners of the bonds.

The circumstances of each case of this description govern the decision thereof.

Fosdick v. Schall, 99 U. S., 225.

Notice to the trustee is notice to the bondholders.

Rorer on Railroads, p. 259.

When the president of the railroad company, acting by the advice and with the consent of the trustees in the mortgages, borrowed money to pay for permanent betterments or to pay interest, he should be treated as the agent of the bondholders in the transaction and his representations were theirs, and his fraud, if he committed any, was their fraud because he was acting exclusively for their benefit at their request.

Or the complicity of the trustees in the acts of the company's officers done to enhance the value of their

property, and done at their instance, raised a constructive trust whereby the property benefited was held *pro tanto* for the use of the Bank. Under certain circumstances, and as appellant contends, under circumstances such as are presented here, the fraudulent holder of property is converted into a trustee, and the property itself resorted to for the purpose of recompense.

Perry on Trusts, sec. 170.

A contract made to defraud third persons, who are not parties to it, will be set aside, or a trust will be declared for such third parties.

Perry on Trusts, sec 212.

ARGUMENT.

MAY IT PLEASE THE COURT:

This is a case that multiplication of words can not strengthen. Its mere statement is as strong a presentation of it as can be made. The St. Louis and Southeastern Railway Company was, and always had been, insolvent. Not able to pay interest on its first mortgage bonds, it more than doubled its debt and executed a second mortgage. The necessary permanent betterments added to the property in the fiscal year in which the loan from the Peoples Bank was affected, amounted to $100,000 more than the whole net income of the property. The first mortgage bondholders acting through their trustees devised with the president of the company a plan whereby the company, while remaining in possession of the road, might procure from innocent parties enough money not only to pay the bondholders a

large amount of interest, but to permanently improve their property, and after this resource was exhausted and the property would no longer serve as a decoy, it was to be sequestered under a decree of a Court of Equity, and sold for their benefit. Their plan was foreshadowed by the president in his report to the stockholders made October 2, 1873, (Rec. p. 163) and was faithfully carried out. The trustees allowed the property to remain in the company's hands and to be operated by it long after a default had occurred. This was equivalent to vouching for its solvency in view of what afterwards happened. While the company was thus in full possession of the road, its officers, with the full knowledge and consent of the trustees, negotiated large loans, among which was the one in question, and applied the proceeds to the payment of interest due the bondholders or the making of permanent improvements to the property, or both.

This scheme could only be successful if carried out with boldness and effrontery, and we find these qualities appearing in abundance when needed. The Peoples Bank was assured that the company was suffering under a merely temporary embarrassment and needed, say $40,000, great care being taken that the fact that other loans were being effected amounting in all to over $300,000 should not be disclosed. The company was willing to leave $80,000 of its second mortgage bonds as collateral and give the endorsement of Winslow & Wilson, who were said to own the O'Fallon Railroad in the county in which the Bank was situated. The money was loaned—the collateral was worth $160, and the endorsers did not own the

railroad or anything else as far as this record discloses.

Now $40,000 is not of itself a large sum for a railroad in operation through three states to pay, and a loan of that amount might readily be made, which would be refused if it was known to the lender that a plan existed to borrow all the money that could be procured on the company's paper and put it into improvements on mortgaged property, and thus deprive the lender of all hope of reimbursement.

A railroad is unlike other property. Its creditors can look only to its earnings. It cannot be sold piecemeal to pay its debts. Those earnings constitute its value. Here the company was taking the earnings after default on its mortgage. It was enjoying all that was of value in the property, and the mortgagor and mortgagee agree that the insolvent mortgagor of such property may stay in possession and on the faith of the earnings and of its still unassailed financial reputation, borrow money to improve the property and pay interest due the mortgagee and after all is borrowed that the earnings and the reputation will stand, turn the property over to the mortgagee enhanced in value, by reason of the success of the scheme.

It seems to the present writer that no just and upright mind could view a nefarious proceeding of this character with anything but abhorrence, and that a Court of Equity called upon to redress a wrong thus inflicted would be swift to seize those great principles that govern it in the administration of justice and apply them in the enforcement of some adequate remedy.

The relief asked in this case does not necessarily depend upon the fact that there was a diversion of the earnings of the railroad from the object to which a Court of Equity would compel their application, to-wit: the payment of debts incurred in operating and improving the property, but if it did, the proof of that diversion is clear and undisputed.

The testimony of Winslow, the president of the company, leaves no doubt upon the point. Over $100,000 of the earnings in 1874 were paid to the bondholders as interest, (Rec. p. 123) and the balance due them that year being $134,850 (Rec. p. 20), was paid with money borrowed from the Peoples Bank and other persons and corporations. The road was used while it was in the last gasps of financial death as a decoy, by means of which innocent and unsuspecting persons were induced to furnish money to its real owners, the bondholders, to pay debts which their own property owed them, and to better and improve that property, only to be met, when demand for payment was made, by the defense that the mortgage was a prior lien, and out of the proceeds of the mortgaged property, which had been saved and enhanced in value by money borrowed under such circumstances, the mortgagees must first be paid in full. Such a defense, if allowed, makes a Court of Equity into which a suitor must come with the traditional "clean hands" a perpetrator of wrong and a protector of fraud.

CHARLES WAIT THOMAS,
Solicitor for Appellant.